

Tennessee Board of Regents

Lead Center

Tennessee Small Business Development Center Network

Review of Two Contracts Awarded to Jungle Marketing, Inc.

April 2005

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STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

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John G. Morgan
Comptroller

April 15, 2005

The Honorable Phil Bredesen, Governor
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243
and

The Honorable Charles W. Manning, Chancellor
Tennessee Board of Regents
1415 Murfreesboro Road, Suite 350
Nashville, Tennessee 37217

and
Dr. Sidney A. McPhee, President
Middle Tennessee State University
1301 East Main Street
Murfreesboro, Tennessee 37132

Ladies and Gentlemen:

In February 2004, Tennessee Board of Regents (TBR) Chancellor Charles Manning and State Senator Jim Bryson independently requested that TBR's contracts with Jungle Marketing, Inc., be reviewed because of issues raised by several employees of the Tennessee Small Business Development Center Network (TSBDCN) Lead Center about two contracts awarded to Jungle Marketing. Also in February 2004, Ms. Nancy Amons, an investigative reporter with WSMV Channel 4, Nashville's NBC television affiliate, presented a two-part report, "Monkey Business in State Bidding Process," that questioned the bidding process and the contracts awarded to Jungle Marketing. In March 2004, the Fiscal Review Contract Subcommittee, chaired by Senator Bryson, conducted a hearing related to the Jungle Marketing contracts. The purpose of the hearing was to gather available information about the Jungle Marketing contracts.

The TSBDCN Lead Center has been administratively attached to the TBR system since the Lead Center was established in 1984. Since its establishment, the Lead Center has been subject to TBR policies and procedures and its staff has been TBR system employees. Any contracts to which the Lead Center is a party and the Lead Center initiated are considered to be TBR contracts, subject to TBR's procurement policies and procedures.

At the time the contracts were let, the TSBDCN Lead Center was housed at TBR's Central Office. Effective January 2000, the Lead Center had been relocated from the University of Memphis to the TBR Central Office in Nashville, Tennessee. Effective July 2004, the Lead Center was again relocated, this time to Middle Tennessee State University (MTSU) in Murfreesboro, Tennessee. According to TBR staff, the move to MTSU was unrelated to the issues examined in this review.

Jungle Marketing, a Colorado-based marketing firm located in Colorado Springs, was awarded both contracts in question by TBR. The first contract related to developing the TSBDCN marketing plan. The contract's effective start date was January 26, 2001; after an amendment extending the termination date, it expired July 1, 2001. TBR paid \$46,048.21 for contract-related activities and deliverables. The second contract related to implementing the TSBDCN marketing plan. The contract's effective start date was November 10, 2001, and it expired December 31, 2002. TBR paid \$80,480.73 for contract-related activities and deliverables. Thus, TBR paid Jungle Marketing a total of \$126,528.94 for both contracts.

The auditors examined three allegations and related issues relative to the requests for proposals (RFPs) and contracts in question.

The information provided to the Division of State Audit alleged that Mr. Albert Laabs, then the TSBDCN State Director: (1) improperly entered into a sole-source contract to develop the TSBDCN marketing plan (the first contract) with a personal friend, Mr. Robert Smith, President of Jungle Marketing; and (2) so restricted the requirements contained in the Request for Proposal (RFP) for the contract to implement the TSBDCN marketing plan (the second contract) that Jungle Marketing was the only marketing firm qualified to submit a proposal.

Additional information in Ms. Amons' televised investigative report alleged that in November 2002 Mr. Smith offered Mr. Laabs the free use of a condo at a ski resort in Colorado for the third week in January 2003, raising the possibility that Mr. Laabs had improperly used his position to solicit a personal benefit or that Mr. Smith had provided the condo to Mr. Laabs as a quid pro quo for receiving the contracts.

Mr. Laabs was hired as Interim State Director for the TSBDCN Lead Center on January 1, 2000. Prior to his hire as Interim State Director, Mr. Laabs was the Training and Research Manager with the TSBDCN Lead Center while it was located at the University of Memphis. Mr. Laabs was hired as the permanent State Director on April 1, 2000. While at the University of Memphis, Mr. Laabs had prior satisfactory experience with Jungle Marketing because he had arranged for Jungle Marketing to conduct two marketing seminars in the late 1990s.

When the Lead Center was relocated from TBR's Central Office to MTSU in July 2004, Mr. Laabs was reassigned to the Associate Director position with the Lead Center. According to TBR's Vice Chancellor for Academic Affairs, who was Mr. Laabs' direct supervisor at the time, Mr. Laabs' reassignment was unrelated to the issues examined in this review.

This review disclosed that the TSBDCN Marketing Committee originated the idea of contracting with a company to develop and implement a TSBDCN marketing plan, and the Marketing Committee delegated this responsibility to Mr. Laabs. Mr. Laabs initiated and drafted the three RFPs and the two contracts in question and submitted all of these documents to TBR's Business Office for review and approval. The draft contracts were also reviewed by TBR's Office of General Counsel. Ultimately, TBR's Chancellor, through his signatory designees, signed the contracts on behalf of TBR, and Mr. Laabs

signed the contracts as the Lead Center's representative. Thus, although Mr. Laabs initiated the procurement processes, the final approval rested with TBR Central Office staff.

This review determined that the development contract (the first contract) was awarded based on an RFP that was apparently considered competitive by TBR's Director of Fiscal Services, who authorized its issuance. As noted below, some of the terms in the first RFP that were carried forward into the second RFP were later considered too restrictive by TBR's then Vice Chancellor for Business and Finance. After the RFP was issued, two vendors submitted timely bids. A third vendor submitted a late bid, which was not responsive to the RFP. Of the two timely bids, Jungle Marketing's bid was the lower and also the only responsive bid. It was unclear whether anyone other than Mr. Laabs was involved in the final selection, but since there was only one responsive bid, there was apparently no judgment to be exercised in selecting Jungle Marketing. A \$45,000 contract was subsequently executed between TBR and Jungle Marketing. Pursuant to the contract, Jungle Marketing conducted a two-day brainstorming session in Nashville and later submitted a marketing plan to the Lead Center. The Marketing Committee appeared satisfied with Jungle Marketing's performance.

With regard to the second contract (the implementation contract), two RFPs were issued. However, before the initial implementation RFP was issued, Mr. Laabs had proposed obtaining this contract as a sole-source (non-bid) exception to the RFP process. He submitted his written justification for proceeding with a sole-source contract to Business Office staff. The Business Office and the then Vice Chancellor for Business and Finance rejected the request because of the change in scope of service and the substantial estimated cost, and because they did not feel that the services to be provided were so unique that only Jungle Marketing could provide them.

After the decision was made to follow the RFP process, the then Vice Chancellor for Business and Finance delegated responsibility for drafting the RFP to Mr. Laabs. The initial implementation RFP language, developed by Mr. Laabs, brought forward requirements that had been part of the original RFP for the development of the marketing plan. These requirements included a "complete" understanding of the TSBDCN system and a five-year experience requirement. Mr. Laabs' reasoning was that this RFP should be consistent with the first one and the language had been previously approved by TBR staff. It should be noted that no vendor complaints had been received by TBR staff regarding the first RFP. Mr. Laabs submitted an RFP for implementation of the marketing plan to TBR's Director of Fiscal Services, who approved its issuance.

However, this RFP was deemed too restrictive and was withdrawn after a vendor who had not submitted a proposal complained to the then Vice Chancellor for Business and Finance that the RFP was too restrictive. As a result of the complaint, the RFP was modified. The "complete" understanding and five-year experience requirements were removed, and other revisions were included that resulted in a more competitive RFP. The RFP was then reissued. Two vendors responded to the revised RFP, including Jungle Marketing. The vendor who had complained did not respond to the revised RFP. Of the two proposals, Jungle Marketing was selected by the TSBDCN Marketing Committee.

A \$90,255 contract was subsequently executed between TBR and Jungle Marketing. Pursuant to the contract, Jungle Marketing conducted a two-day customer service training session in Nashville; provided brochures, peel-off window/door stickers, and a binder cover and spine design; and created a TSBDCN website. Marketing Committee members expressed a mixed assessment of the services and products received.

TBR and state procurement policies and procedures permit sole-source contracts in certain circumstances. Hence, it is not improper, per se, for staff of a state organization to seek to have a contract

deemed a sole-source contract. However, sole-source contracts should be the exception and should meet certain tests to avoid the possibility of improper circumvention of the basic requirements that provide for open and fair competition with regard to state contracts. With regard to TBR, Policy 04:02:10:00, Section XV (B), states that sole-source purchases are to be made only when items are unique and possess specific characteristics that can be filled by only one source.

In matters surrounding the propriety of a contract, each situation must be viewed on the basis of its own facts. As discussed in the report, there are many legitimate questions that can be asked about the RFP procurement process and results. Answering such questions, which include issues of policy compliance as well as ethical propriety, has entailed constructing a framework of what would constitute ethical behavior and piecing together the history of the RFPs and contracts through interviews and examination of existing documentation.

In the present case, based on presently available information, the actions of Mr. Laabs with regard to the hiring of Jungle Marketing clearly were not abusive. This was not a situation where Mr. Laabs created a need to justify the employment of Jungle Marketing. Instead, the need for these services was established by the TSBDCN Directors and not by Mr. Laabs. After being delegated the responsibility to hire a company to develop a marketing campaign, Mr. Laabs sought guidance from TBR's Business Office at the onset of the procurement process. There are several examples of Mr. Laabs seeking guidance from others within TBR who would be knowledgeable of the proper procedures for handling the contracts. When Mr. Laabs was given direct instructions on how to handle the contracts, he followed them. Mr. Laabs made no efforts to conceal the true nature of the contracts, nor did he misrepresent any aspects of the transactions related to the contracts. Mr. Laabs did not override or circumvent the RFP process.

Regarding the contracts, each contract contained different requirements and involved differing degrees of effort on the part of Jungle Marketing. The development phase would naturally be more difficult and would require more work on the part of Jungle Marketing than implementing an already developed marketing plan. According to Mr. Laabs, the five-year requirement was his effort to satisfy the wish on the part of some Marketing Committee members to hire a company with experience. The experience requirement pertained to working with SBDCs, preferably at the national level. Since Jungle Marketing purported to have 12 years' experience, it appears that Mr. Laabs did not tailor the experience requirement to fit only Jungle Marketing. The original language of the RFP, which contained the "complete understanding" and five-year experience requirements, was reviewed and approved by the TBR Director of Fiscal Services. At the time of the first RFP and contract, no vendor complained about any of the requirements.

Although the first RFP for the second contract (the implementation contract) was later deemed to be too narrow in its requirements, it contained terms that were in the development RFP and that had apparently been considered competitive by TBR officials at the time. After a vendor complained, some of the terms in the development RFP, which had been carried forward into the implementation RFP, were deemed too restrictive. The RFP was withdrawn, revised, and reissued. This matter appears to have been appropriately handled.

With regard to cost, although the value of services is subjective, it appears that based on e-mail correspondence and the statements of Lead Center staff and Marketing Committee members, the development of the various deliverables did involve substantial effort on the part of Jungle Marketing.

Clearly, the most serious charge in the allegations is the possible use of a condo owned or controlled by the vendor. It is indisputable that the vendor offered the use of a condo to Mr. Laabs as

evidenced by the vendor's e-mail to Mr. Laabs, dated November 7, 2002. According to both Mr. Laabs and the vendor, Mr. Laabs told the vendor that such an offer was improper, and Mr. Laabs never stayed in the condo. However, there is not an e-mail from Mr. Laabs back to the vendor refusing the offer and stating that it was improper. On the other hand, Mr. Laabs had not deleted the vendor's e-mail from his computer in an attempt to cover up the offer. This e-mail was not received by Mr. Laabs early in the contracting process when Mr. Laabs was first considering which contract process to follow. Rather, it was received within two months of the expiration of the contract period of the second contract, and it appeared to be part of frequent e-mail communications between Mr. Laabs and Mr. Smith. Other e-mail correspondence between Mr. Laabs and Mr. Smith that was reviewed by the auditors appeared to be business related.

The auditors explored several avenues in trying to determine whether Mr. Laabs had used a condo as offered by the vendor in the e-mail. Based on the statements of otherwise disinterested third parties who would have knowledge of such use, there was no such use, and there are uncertainties as to whether the vendor even had access to such a condo. Of course, just because the vendor may not have owned or had access to a condo like the one described in the e-mail, such an offer could still be construed as an attempt to interfere with the proper contracting policies of the board. Still, there is no evidence presently available that Mr. Laabs in fact accepted the vendor's offer or that the offer unduly influenced Mr. Laabs' efforts in obtaining the services deemed necessary for the center by Mr. Laabs and others associated with the center. Based on presently available information, Mr. Laabs did not personally benefit as a result of Jungle Marketing receiving the contracts.

There were other problems with the process of the contracts that are addressed in the report. However, it does not appear that these problems were due to any override of controls by Mr. Laabs. These situations certainly did not help the overall appearance of the matters surrounding the contracts at issue, but they do not appear to be situations caused or used by Mr. Laabs to circumvent the RFP process.

As part of their review of the contracts, the auditors noted weaknesses in TBR's purchasing policy and procedures. Mr. Laabs did not create these weaknesses, nor did he contribute to them or exploit them. The auditors also noted non-compliance with TBR's policy requirements that written bid evaluations be prepared and be made available for public inspection and that receiving reports be maintained that document the quantity of items received. These requirements applied to Mr. Laabs and other Lead Center staff, but he and the others did not comply with them, apparently due to a lack of knowledge.

- TBR's purchasing policy did not establish a defined process for reviewing and approving RFPs issued under TBR's authority with a specific focus, as part of that process, to establish that the RFPs were appropriately competitive.
- TBR's purchasing policy required that an RFP be sent to the vendors on the vendor list 14 days before the bid opening date. However, TBR's policy did not require documentation of the mailings and Business Office staff did not document the mailings.
- TBR's purchasing policy did not address documenting when proposals were received, and such documentation was not maintained.
- TBR's purchasing policy did not explicitly address documenting the evaluation process for proposals, nor did TBR's policy address the number or composition of the evaluation team.

- TBR's purchasing policy did not address mailing "Notice of Intent to Award" letters to all the other vendors on the vendor list once a decision had been made to award the contract to one vendor.
- TBR's purchasing policy required a receiving agent to make a written certification that the items received were equal in quality and quantity to those requisitioned, but Lead Center staff did not retain shipping documentation that showed the quantity of brochures and peel-off door/window stickers received.

This review further determined that the cost of the development contract (the first contract) exceeded the \$45,000.00 maximum liability stated in the contract. TBR paid \$46,048.21 for Jungle Marketing's work under the contract, which exceeded the contract limit by \$1,048.21 (2%). The overcharges were the result of two types of errors. First, travel expenses were erroneously charged to the contract by Business Office staff without verification that total charges would remain within the contract limit. Second, hotel expenses were billed directly to TBR's Central Office and thus were erroneously not charged to the contract by TBR Business Office staff, although they should have been.

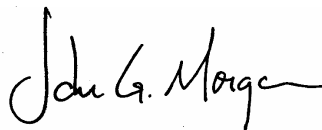
Unlike the development contract, the implementation contract (the second contract) cost less than the contract limit of \$90,255.00 by \$9,774.27 (11%).

TBR management, MTSU management, TSBDCN Directors, and Lead Center staff should carefully scrutinize future requests for the procurement of goods and services to determine whether such goods and services are needed, and if needed, are obtained with acceptable quality at a reasonable cost. They also should determine whether such goods and services could be provided by state employees and through the use of state resources with acceptable quality at a lower cost than outside vendors.

In comparing TBR's purchasing policy with state laws and rules and regulations, the auditors determined that TBR's policy had not been revised to incorporate current requirements. Such policies are required to be submitted to the Board of Standards for review and approval by Section 12-3-103, *Tennessee Code Annotated*.

This review resulted in 12 recommendations designed to enhance TBR's policies, procedures, documentation requirements, and internal controls relating to issuing RFPs, evaluating bids, approving contracts, and monitoring vendor performance. These recommendations were discussed with TBR staff during the review.

Sincerely,

A handwritten signature in black ink, reading "John G. Morgan". The signature is fluid and cursive, with a long horizontal stroke at the end.

John G. Morgan
Comptroller of the Treasury

State of Tennessee

A u d i t H i g h l i g h t s

Comptroller of the Treasury

Division of State Audit

Special Report

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ORIGIN OF THE REVIEW

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The Division of State Audit began its review of these matters in February 2004.

OBJECTIVES OF THE REVIEW

The objectives of the review were

1. to determine whether Mr. Laabs, the then State Director of the Tennessee Small Business Development Center Network (TSBDCN), improperly entered into a sole-source contract with Jungle Marketing to develop a marketing plan (the first contract);
2. to determine whether Mr. Laabs so restricted the requirements contained in the Request for Proposals for the contract to implement the TSBDCN marketing plan (the second contract) that Jungle Marketing was the only marketing firm qualified to submit a proposal;

3. to determine whether Mr. Laabs circumvented controls or exerted undue influence over the procurement process;
4. to determine whether TBR's policies and procedures were followed in awarding the contracts to Jungle Marketing;
5. to consider the adequacy of relevant TBR policy and procedures;
6. to determine whether Jungle Marketing fulfilled its contractual obligations;
7. to evaluate contract cost controls and documentation of performance;
8. to determine whether Mr. Laabs improperly used his position to solicit a personal benefit from Jungle Marketing and whether Jungle Marketing provided to Mr. Laabs the free use of a condo at a ski resort in Colorado as a quid pro quo for receiving the contracts; and
9. to refer our findings to TBR, MTSU, TSBDCN, and other agencies, as appropriate.

SCOPE OF THE REVIEW

Our review included an examination of two contracts awarded to Jungle Marketing, as well as the chronology of the development and issuance of the related Requests for Proposals. We interviewed Mr. Albert Laabs, in his position as the TSBDCN State Director and, later, the TSBDCN Associate Director. We also interviewed Mr. Robert Smith, President of Jungle Marketing.

We interviewed the available members of the TSBDCN's Marketing Committee. These were Mr. James Frakes, the SBDC Director at Dyersburg State Community College; Mr. Patrick Geho, the SBDC Director at Middle Tennessee State University; Ms. Laurie Swift, the then SBDC Director at Austin Peay State University; Ms. Carol Clark, the subsequent SBDC Director at Austin Peay State University; and Mr. William Latham, the SBDC Director at Tennessee State University. The remaining member of the Marketing Committee, Mr. Gene Odom, the SBDC Director at the International Trade Center in Memphis, had retired and moved to France, and thus was not available to be interviewed.

In addition, we interviewed staff of TBR's Business Office and General Counsel's Office, former Lead Center staff, and vendors related to the RFPs in question. We also interviewed management-level representatives for The Resort Company, which manages The Charter at Beaver Creek in Colorado.

Our examination included review of relevant documents related to the contracts including the RFPs, vendor lists, evaluation forms, draft and final contracts, evidence of contract performance, and related correspondence.

RESULTS OF THE REVIEW

This review disclosed that the TSBDCN Marketing Committee originated the idea of contracting with a company to develop and implement a TSBDCN marketing plan, and the Marketing Committee delegated this responsibility to Mr. Laabs. Mr. Laabs initiated and drafted the three RFPs and the two contracts in question and submitted all of these documents to TBR's Business Office for review and

approval. The draft contracts were also reviewed by TBR's Office of General Counsel. Ultimately, TBR's Chancellor, through his signatory designees, signed the contracts on behalf of TBR, and Mr. Laabs signed the contracts as the Lead Center's representative. Thus, although Mr. Laabs initiated the procurement processes, the final approval rested with TBR Central Office staff.

This review determined that the development contract (the first contract) was awarded based on an RFP that was apparently considered competitive by TBR's Director of Fiscal Services, who authorized its issuance. As noted below, some of the terms in the first RFP that were carried forward into the second RFP were later considered too restrictive by TBR's then Vice Chancellor for Business and Finance. After the RFP was issued, two vendors submitted timely bids. A third vendor submitted a late bid, which was not responsive to the RFP. Of the two timely bids, Jungle Marketing's bid was the lower and also the only responsive bid. It was unclear whether anyone other than Mr. Laabs was involved in the final selection, but since there was only one responsive bid, there was apparently no judgment to be exercised in selecting Jungle Marketing. A \$45,000 contract was subsequently executed between TBR and Jungle Marketing. Pursuant to the contract, Jungle Marketing conducted a two-day brainstorming session in Nashville and later submitted a marketing plan to the Lead Center. The Marketing Committee appeared satisfied with Jungle Marketing's performance.

With regard to the second contract (the implementation contract), two RFPs were issued. However, before the initial implementation RFP was issued, Mr. Laabs had proposed obtaining this contract as a sole-source (non-bid) exception to the RFP process. He submitted his written justification for proceeding with a sole-source contract to Business Office staff. The Business Office and the then Vice Chancellor for Business and Finance rejected the request because of the change in scope of service and the substantial estimated cost, and because they did not feel that the services to be provided were so unique that only Jungle Marketing could provide them.

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In the present case, based on presently available information, the actions of Mr. Laabs with regard to the hiring of Jungle Marketing clearly were not abusive. This was not a situation where Mr. Laabs created a need to justify the employment of Jungle Marketing. Instead, the need for these services was established by the TSBDC Directors and not by Mr. Laabs. After being delegated the responsibility to hire a company to develop a marketing campaign, Mr. Laabs sought guidance from TBR's Business Office at the onset of the procurement process. There are several examples of Mr. Laabs seeking guidance from others within TBR who would be knowledgeable of the proper procedures for handling the contracts. When Mr. Laabs was given direct instructions on how to handle the contracts, he followed them. Mr. Laabs made no efforts to conceal the true nature of the contracts, nor did he misrepresent any aspects of the transactions related to the contracts. Mr. Laabs did not override or circumvent the RFP process.

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Although the first RFP for the second contract (the implementation contract) was later deemed to be too narrow in its requirements, it contained terms that were in the development RFP and that had apparently been considered competitive by TBR officials at the time. After a vendor complained, some of the terms in the development RFP, which had been carried forward into the implementation RFP, were deemed too restrictive. The RFP was withdrawn, revised, and reissued. This matter appears to have been appropriately handled.

With regard to cost, although the value of services is subjective, it appears that based on e-mail correspondence and the statements of Lead Center staff and Marketing Committee members, the development of the various deliverables did involve substantial effort on the part of Jungle Marketing.

Clearly, the most serious charge in the allegations is the possible use of a condo owned or controlled by the vendor. It is indisputable that the vendor offered the use of a condo to Mr. Laabs as evidenced by the vendor's e-mail to Mr. Laabs, dated November 7, 2002. According to both Mr. Laabs and the vendor, Mr. Laabs told the vendor that such an offer was improper, and Mr. Laabs never stayed in the condo. However, there is not an e-mail from Mr. Laabs back to the vendor refusing the offer and stating that it was improper. On the other hand, Mr. Laabs had not deleted the vendor's e-mail from his computer in an attempt to cover up the offer. This e-mail was not received by Mr. Laabs early in the contracting process when Mr. Laabs was first considering which contract process to follow. Rather, it was received within two months of the expiration of the contract period of the second contract, and it appeared to be part of frequent e-mail communications between Mr. Laabs and Mr. Smith. Other e-mail correspondence between Mr. Laabs and Mr. Smith that we reviewed appeared to be business related.

We explored several avenues in trying to determine whether Mr. Laabs had used a condo as offered by the vendor in the e-mail. Based on the statements of otherwise disinterested third parties who would have knowledge of such use, there was no such use, and there are uncertainties as to whether the vendor even had access to such a condo. Of course, just because the vendor may not have owned or had access to a condo like the one described in the e-mail, such an offer could still be construed as an attempt to interfere with the proper contracting policies of the board. Still, there is no evidence presently available that Mr. Laabs in fact accepted the vendor's offer or that the offer unduly influenced Mr. Laabs' efforts in obtaining the services deemed necessary for the center by Mr. Laabs and others associated with the center. Based on presently available information, Mr. Laabs did not personally benefit as a result of Jungle Marketing receiving the contracts.

There were other problems with the process of the contracts that are addressed in the report. However, it does not appear that these problems were due to any override of controls by Mr. Laabs. These situations certainly did not help the overall appearance of the matters surrounding the contracts in issue, but they do not appear to be situations caused or used by Mr. Laabs to circumvent the RFP process.

As part of our review of the contracts, we noted weaknesses in TBR's purchasing policy and procedures. Mr. Laabs did not create these weaknesses, nor did he contribute to them or exploit them. The auditors also noted non-compliance with TBR's policy requirements that written bid evaluations be prepared and be made available for public inspection and that receiving reports be maintained that document the quantity of items received. These requirements applied to Mr. Laabs and other Lead Center staff, but he and the others did not comply with them, apparently due to a lack of knowledge.

1. TBR's purchasing policy did not establish a defined process for reviewing and approving RFPs issued under TBR's authority with a specific focus, as part of that process, to establish that the RFPs were appropriately competitive. After a vendor complained about the restrictive nature of the implementation RFP, the then Vice Chancellor for Business and Finance reviewed the RFP and determined that it was restrictive, although the Director of Fiscal Services, who reported to the Vice Chancellor for Business and Finance, had approved the issuance of the RFP. Subsequently, the then Vice Chancellor for Business and Finance, the Director of Fiscal Services, and Mr. Laabs worked together to revise the RFP, with the effect of making the RFP less restrictive. The RFP was revised and then issued. A more structured pre-issuance review process would enable the potentially restrictive nature of RFPs to be detected and corrected prior to issuance. In addition, the utilization of a pre-proposal conference as part of the RFP procurement process would provide vendors the opportunity to formally express concerns, issues, and complaints and to have those matters resolved prior to their submission of proposals.

2. TBR's purchasing policy required that an RFP be sent to the vendors on the vendor list 14 days before the bid opening date. However, TBR's policy did not require documentation of the mailings and Business Office staff did not document the mailings. Thus, the auditors could not confirm that the RFPs were mailed on the proper dates to all the vendors on the vendor list. The auditors reached all but three vendors who apparently had been sent the RFP through the mail and who had not responded. However, this procedure did not result in useful information since the vendor representatives told the auditors that they could not confirm whether they had received the RFPs because none of the vendors could locate any records related to the RFPs and no one remembered receiving or responding to them. The vendor representatives also stated that their companies did not retain an RFP or any information related to it if they did not submit a proposal in response to the RFP. The responsibility for transmitting copies of the RFP to the vendors rested with the Business Office, not the Lead Center.
3. TBR's purchasing policy did not address documenting when proposals were received, and such documentation was not maintained. A documented procedure regarding appropriate dating becomes critical when bid proposals are disqualified on the grounds that they were received late. In the case of proposals submitted in response to the first RFP, one proposal was marked by staff that it was received late and was disqualified. Moreover, that RFP directed vendors to submit their proposals to the TSBDCN State Director. This procedure could have enabled the State Director, or other Lead Center staff, to attempt to improperly influence the procurement process by removing competing proposals from consideration before the public bid opening or by disqualifying proposals as late submissions when they were in fact submitted on time. Presumably, vigilant vendors would attend or monitor the public bid opening and would promptly detect any improper omission of their bids. However, effective internal controls would insulate the procurement process from staff that might have an interest in the outcome.
4. TBR's purchasing policy did not explicitly address documenting the evaluation process for proposals, nor did TBR's policy address the number or composition of the evaluation team. TBR's purchasing policy and procedures stated that the invitation-to-bid document will specify the date the bid evaluations would be made available for viewing, and this language made evident that written bid evaluations should be prepared and made available for public inspection. However, no evaluation forms based on the criteria and scoring percentages stated in the RFP were prepared for the two bids to develop the TSBDCN marketing plan, and the auditors could not identify any reviewer other than Mr. Laabs. Jungle Marketing was the low bidder and the only responsive bidder to the RFP with regard to the experience requirement. In contrast, for the two bids to implement the TSBDCN marketing plan, the TSBDCN Marketing Committee completed evaluation forms that reflected the criteria and scoring percentages stated in the RFP, and the evaluation process was well documented.

In an appropriately structured procurement process, Business Office staff would provide explicit directions and guidance to reviewers relative to the evaluation process and proper documentation. However, with regard to the evaluation of bids for the marketing planning work (the first contract), TBR Business Office staff did not provide Mr. Laabs with direction or guidance in these matters. Business Office staff described the evaluation process as decentralized, with the responsibility for completing evaluations and documenting the process residing with the individual departments. Mr. Laabs told the auditors he was not familiar with the RFP process or documentation related to bid evaluations, and that he received little guidance from the Business Office in these matters.

5. TBR's purchasing policy did not address mailing "Notice of Intent to Award" letters to all the other vendors on the vendor list once a decision had been made to award the contract to one vendor. In the case of the first RFP for the development of a marketing plan (the first contract), a "Notice of Intent to Award" letter was sent to the other vendors, but in the case of the RFP for the implementation of the marketing plan (the second contract), no letter was sent to the losing vendors. The "Notice of Intent" letter is important because its date establishes the beginning of a time frame for official protests. The responsibility for sending these letters rested with the Business Office, not the Lead Center.
6. TBR's purchasing policy required that when any supplies, equipment, or materials are received, the receiving agent will make a written certification that the items received were equal in quality and quantity to those requisitioned, and also that complete records on all receiving reports will be maintained in order to provide a clear audit trail on the receipt of all purchases. However, Lead Center staff did not retain shipping documentation that showed the quantity of brochures and peel-off door/window stickers received. Mr. Laabs stated that brochures and stickers were received, although he could not confirm the number. He provided the auditors with a copy of the brochure and the peel-off door/window sticker. In addition, the Center's account manager provided shipping documentation that she had obtained from a box of the brochures that remained in the office, although that document did not record the quantity shipped. The responsibility for documenting receipt of goods ordered rested with the Lead Center, not the TBR Business Office.

This review further determined that the cost of the development contract (the first contract) exceeded the \$45,000.00 maximum liability stated in the contract. TBR paid \$46,048.21 for Jungle Marketing's work under the contract, which exceeded the contract limit by \$1,048.21 (2%). The overcharges were the result of two types of errors. First, travel expenses were erroneously charged to the contract by Business Office staff without verification that total charges would remain within the contract limit. Second, hotel expenses were billed directly to TBR's Central Office and thus were erroneously not charged to the contract by TBR Business Office staff, although they should have been.

Unlike the development contract, the implementation contract (the second contract) cost less than the contract limit of \$90,255.00 by \$9,774.27 (11%).

TBR management, MTSU management, TSBDCN Directors, and Lead Center staff should carefully scrutinize future requests for the procurement of goods and services to determine whether such goods and services are needed, and if needed, are obtained with acceptable quality at a reasonable cost. They also should determine whether such goods and services could be provided by state employees and through the use of state resources with acceptable quality at a lower cost than outside vendors.

In comparing TBR's purchasing policy with state laws and rules and regulations, we determined that TBR's policy had not been revised to incorporate current requirements. Such policies are required to be submitted to the Board of Standards for review and approval by Section 12-3-103, *Tennessee Code Annotated*.

RECOMMENDATIONS

This review resulted in 12 recommendations designed to enhance TBR's policies, procedures, documentation requirements, and internal controls relating to issuing RFPs, evaluating bids, approving contracts, and monitoring vendor performance. These recommendations were discussed with TBR staff during the review.

Tennessee Board of Regents

Lead Center

Tennessee Small Business Development Center Network

Review of Two Contracts Awarded to Jungle Marketing, Inc.

April 2005

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Tennessee Board of Regents
Lead Center
Tennessee Small Business Development Center Network
Review of Two Contracts Awarded to Jungle Marketing, Inc.
April 2005

INTRODUCTION

ORIGIN OF THE REVIEW

In February 2004, Tennessee Board of Regents (TBR) Chancellor Charles Manning and State Senator Jim Bryson independently requested that TBR's contracts with Jungle Marketing, Inc., be reviewed because of issues raised by several employees of the Tennessee Small Business Development Center Network (TSBDCN) Lead Center about two contracts awarded to Jungle Marketing. Also in February 2004, Ms. Nancy Amons, an investigative reporter with WSMV Channel 4, Nashville's NBC television affiliate, presented a two-part report, "Monkey Business in State Bidding Process," that questioned the bidding process and the contracts awarded to Jungle Marketing. In March 2004, the Fiscal Review Contract Subcommittee, chaired by Senator Bryson, conducted a hearing related to the Jungle Marketing contracts. The purpose of the hearing was to gather available information about the Jungle Marketing contracts.

The TSBDCN Lead Center has been administratively attached to the TBR system since the Lead Center was established in 1984. Since its establishment, the Lead Center has been subject to TBR policies and procedures and its staff has been TBR system employees. Any contracts to which the Lead Center is a party and the Lead Center initiated are considered to be TBR contracts, subject to TBR's procurement policies and procedures.

At the time the contracts were let, the TSBDCN Lead Center was housed at TBR's Central Office. Effective January 2000, the Lead Center had been relocated from the University of Memphis to the TBR Central Office in Nashville, Tennessee. Effective July 2004, the Lead Center was again relocated, this time to Middle Tennessee State University (MTSU) in Murfreesboro, Tennessee. According to TBR staff, the move to MTSU was unrelated to the issues examined in this review.

Jungle Marketing, a Colorado-based marketing firm located in Colorado Springs, was awarded both contracts in question by TBR. The first contract related to developing the TSBDCN marketing plan. The contract's effective start date was January 26, 2001; after an amendment extending the termination date, it expired July 1, 2001. TBR paid \$46,048.21 for contract-related activities and deliverables. The second contract related to implementing the TSBDCN marketing plan. The contract's effective start date was November 10, 2001, and it expired December 31, 2002. TBR paid \$80,480.73 for contract-related activities and deliverables. Thus, TBR paid Jungle Marketing a total of \$126,528.94 for both contracts.

We examined three allegations and related issues relative to the requests for proposals (RFPs) and contracts in question.

The information provided to the Division of State Audit alleged that Mr. Albert Laabs, then the TSBDCN State Director: (1) improperly entered into a sole-source contract to develop the TSBDCN marketing plan (the first contract) with a personal friend, Mr. Robert Smith, President of Jungle Marketing; and (2) so restricted the requirements contained in the Request for Proposal (RFP) for the contract to implement the TSBDCN marketing plan (the second contract) that Jungle Marketing was the only marketing firm qualified to submit a proposal.

Additional information in Ms. Amons' televised investigative report alleged that in November 2002 Mr. Smith offered Mr. Laabs the free use of a condo at a ski resort in Colorado for the third week in January 2003, raising the possibility that Mr. Laabs had improperly used his position to solicit a personal benefit or that Mr. Smith had provided the condo to Mr. Laabs as a quid pro quo for receiving the contracts.

Mr. Laabs was hired as Interim State Director for the TSBDCN Lead Center on January 1, 2000. Prior to his hire as Interim State Director, Mr. Laabs was the Training and Research Manager with the TSBDCN Lead Center while it was located at the University of Memphis. Mr. Laabs was hired as the permanent State Director on April 1, 2000. While at the University of Memphis, Mr. Laabs had prior satisfactory experience with Jungle Marketing because he had arranged for Jungle Marketing to conduct two marketing seminars in the late 1990s.

When the Lead Center was relocated from TBR's Central Office to MTSU in July 2004, Mr. Laabs was reassigned to the Associate Director position with the Lead Center. According to TBR's Vice Chancellor for Academic Affairs, who was Mr. Laabs' direct supervisor at the time, Mr. Laabs' reassignment was unrelated to the issues examined in this review.

The Division of State Audit began its review of these matters in February 2004.

OBJECTIVES OF THE REVIEW

The objectives of the review were

1. to determine whether Mr. Laabs, the State Director of the Tennessee Small Business Development Center Network, improperly entered into a sole-source contract with Jungle Marketing to develop a marketing plan (the first contract);

2. to determine whether Mr. Laabs so restricted the requirements contained in the Request for Proposals for the contract to implement the TSBDCN marketing plan (the second contract) that Jungle Marketing was the only marketing firm qualified to submit a proposal;
3. to determine whether Mr. Laabs circumvented controls or exerted undue influence over the procurement process;
4. to determine whether TBR's policies and procedures were followed in awarding the contracts to Jungle Marketing;
5. to consider the adequacy of relevant TBR policies and procedures;
6. to determine whether Jungle Marketing fulfilled its contractual obligations;
7. to evaluate contract cost controls and documentation of performance;
8. to determine whether Mr. Laabs had improperly used his position to solicit a personal benefit from Jungle Marketing and whether Jungle Marketing had provided to Mr. Laabs the free use of a condo at a ski resort in Colorado as a quid pro quo for receiving the contracts; and
9. to refer our findings to TBR, MTSU, TSBDCN, and other agencies, as appropriate.

SCOPE OF THE REVIEW

Our review included an examination of two contracts awarded to Jungle Marketing, as well as the chronology of the development and issuance of the related Requests for Proposals. (See Exhibit 1.) We interviewed Mr. Albert Laabs, in his position as the TSBDCN State Director and, later, the TSBDCN Associate Director. We also interviewed Mr. Robert Smith, President of Jungle Marketing.

We interviewed the available members of the TSBDCN's Marketing Committee. These were Mr. James Frakes, the SBDC Director at Dyersburg State Community College; Mr. Patrick Geho, the SBDC Director at Middle Tennessee State University; Ms. Laurie Swift, the then SBDC Director at Austin Peay State University; Ms. Carol Clark, the subsequent SBDC Director at Austin Peay State University; and Mr. William Latham, the SBDC Director at Tennessee State University. The remaining member of the Marketing Committee, Mr. Gene Odom, the SBDC Director at the International Trade Center in Memphis, had retired and moved to France, and thus was not available to be interviewed.

In addition, we interviewed staff of TBR's Business Office and General Counsel's Office, former Lead Center staff, and vendors related to the RFPs in question. We also interviewed management-level representatives for The Resort Company, which manages The Charter at Beaver Creek in Colorado.

Our examination included review of relevant documents related to the contracts, including the RFPs, vendor lists, evaluation forms, draft and final contracts, evidence of contract performance, and related correspondence.

BACKGROUND

Tennessee Small Business Development Center Network

Federal Requirements

The *Code of Federal Regulations*, Title 13, Volume 1, Part 130.200, requires that a Small Business Development Center Network be operated by a higher education institution. Eligible institutions include (1) a public or private institution of higher education; (2) a land-grant college or university; (3) a college or school of business, engineering, commerce or agriculture; (4) a community or junior college; and (5) an entity formed by two or more of the above entities. The *Code of Federal Regulations*, Title 13, Volume 1, Part 130.320, also requires the eligible institution to locate its Lead Center and SBDC providers in areas that are readily accessible to small businesses.

Mission

According to the TSBDCN's website, the mission of the TSBDCN is to provide solutions to the problems of potential and existing small businesses through consultation, education, referral, and support services. The TSBDCN seeks to promote growth in the domestic and international markets of Tennessee's business community and enhance its economic impact on the state by providing these services through an interactive network of resource partners.

Organization

The TSBDCN consists of one Lead Center and 12 full-service centers in Tennessee, with eight additional affiliate and satellite offices operated by the service centers. The TSBDCN as a whole employs approximately 55 people statewide. (See Exhibit 2.)

Funding Sources and Expenditures

The TSBDCN, including the Lead Center, the 12 full service centers, and the associated affiliates and satellite centers, is funded through a combination of federal and state sources. The federal funds are provided by the Small Business Administration and the state funds are provided through state appropriations and also contributions of salaries and office expenses by the higher education institutions. According to information provided by TBR staff, the preliminary report as of March 15, 2005, showed that for the period January through December, 2004, the TSBDCN expended \$3,705,245.78. Of the total amount expended, federal funds constituted \$1,597,786.00 (43%).

Changes in Location of the TSBDCN Lead Center

At the time the contracts were let, the TSBDCN Lead Center was housed at TBR's Central Office. Effective January 2000, the Lead Center had been relocated from the University of Memphis to the TBR Central Office in Nashville, Tennessee. Effective July 2004, the Lead Center was again relocated, this time to Middle Tennessee State University (MTSU) in Murfreesboro, Tennessee. According to TBR staff, the move to MTSU was unrelated to the issues examined in this review.

Lead Center Organization

After the TSBDCN Lead Center was relocated from the University of Memphis to TBR's Central Office in Nashville, Tennessee, in January 2000, the staff positions consisted of a State Director, who reported to the Vice Chancellor for Academic Affairs, an Associate State Director, a Financial Manager, a Management Information Systems Manager, an Executive Secretary, and an Administrative Assistant. (See Exhibit 3.)

In July 2004, when the TSBDCN's Lead Center was moved from TBR's Central Office to MTSU, the staffing positions remained the same with the addition of a Training Manager.

Mr. Laabs' Hire as Interim and Then Permanent TSBDCN State Director

Mr. Laabs was hired as Interim State Director on January 1, 2000. Prior to his hire as Interim State Director, Mr. Laabs was the Training and Research Manager with the TSBDCN Lead Center while it was located at the University of Memphis. Mr. Laabs was hired as the permanent State Director on April 1, 2000.

With the move of the TSBDCN Lead Center from TBR's Central Office to MTSU, Mr. Laabs was reassigned to the Associate State Director position with the Lead Center, effective July 1, 2004. Mr. Laabs' reassignment was recorded in a memorandum from TBR's Vice Chancellor for Academic Affairs to him dated April 28, 2004. According to Dr. Paula Short, TBR's Vice Chancellor for Academic Affairs who was Mr. Laabs' direct supervisor at the time, Mr. Laabs' reassignment was unrelated to the issues examined in this review.

TBR Purchasing Policy and Procedures

According to Ms. Christine Modisher, TBR's General Counsel, the TBR Central Office became the prime contractor with the U.S. Small Business Administration for the TSBDCN in 2000. Since TBR became the prime contractor, its purchasing policies and guidelines applied to the TSBDCN. TBR purchases are controlled by Policy 4:02:10:00. The 1998 policy was in effect at the time the RFPs for both the development of the TSBDCN marketing plan (the first contract) and the implementation of that plan (the second contract) were issued. The 1998 policy was not revised further until June 28, 2002, after the two contracts in question had already been awarded.

TBR's purchasing policy stated that estimated purchases of \$10,000 or more required solicitation from 15 vendors, or the number of vendors on the vendors list, whichever was less. The policy further stated that Requests for Proposals (RFPs) must be mailed to vendors at least 14 days before the date the bids are scheduled to be opened. Further, the policy stated that bids must be received in a specified location on or before the date and hour designated for bid opening. According to the policy, bids submitted after the designated date and hour would not be considered.

The policy provided for protested bids by requiring that a protest be submitted in writing to the chief purchasing officer within ten days after the bidder knew or should have known the facts giving rise to the protest. The protest process outlined in the policy also provided for a bidder to file an appeal to the chief business officer if the response of the chief purchasing officer did not resolve the matter to the satisfaction of the aggrieved bidder. Ultimately, the aggrieved bidder could appeal the decision of the chief business officer to the Chancellor or his or her designee. According to the policy, the determination of the Chancellor (or designee) was final and would be submitted in writing to the protestor.

TBR's policy and procedures at that time did not require that the mailing of RFPs be documented as to the date mailed, or that the receipt of bids be documented as to the date and time received. TBR's policy did not explicitly specify an RFP review process or the appropriate documentation of the evaluations of RFPs. However, TBR's policy and procedures stated that invitations to bid shall specify the date bid evaluations would be made available for viewing, which made evident that written bid evaluations should be prepared and made available for public inspection. TBR's purchasing policy further required that when any supplies, equipment, or materials are received, the receiving agent shall make a written certification that the items received were equal in quality and quantity to those requisitioned, and also that complete records of all receiving reports shall be maintained in order to provide a clear audit trail on the receipt of all purchases.

DETAILS OF THE REVIEW

CONCLUSIONS

This review disclosed that the TSBDCN Marketing Committee originated the idea of contracting with a company to develop and implement a TSBDCN marketing plan, and the Marketing Committee delegated this responsibility to Mr. Laabs. Mr. Laabs initiated and drafted the three RFPs and the two contracts in question and submitted all of these documents to TBR's Business Office for review and approval. The draft contracts were also reviewed by TBR's Office of General Counsel. Ultimately, TBR's Chancellor, through his signatory designees, signed the contracts on behalf of TBR, and Mr. Laabs signed the contracts as the Lead Center's representative. Thus, although Mr. Laabs initiated the procurement processes, the final approval rested with TBR Central Office staff.

This review determined that the development contract (the first contract) was awarded based on an RFP that was apparently considered competitive by TBR's Director of Fiscal Services, who authorized its issuance. As noted below, some of the terms in the first RFP that were carried forward into the second RFP were later considered too restrictive by TBR's then Vice Chancellor for Business and Finance. After the RFP was issued, two vendors submitted timely bids. A third vendor submitted a late bid, which was not responsive to the RFP. Of the two timely bids, Jungle Marketing's bid was the lower and also the only responsive bid. It was unclear whether anyone other than Mr. Laabs was involved in the final selection, but since there was only one responsive bid, there was apparently no judgment to be exercised in selecting Jungle Marketing. A \$45,000 contract was subsequently executed between TBR and Jungle Marketing. Pursuant to the contract, Jungle Marketing conducted a two-day brainstorming session in Nashville and later submitted a marketing plan to the Lead Center. The Marketing Committee appeared satisfied with Jungle Marketing's performance.

With regard to the second contract (the implementation contract), two RFPs were issued. However, before the initial implementation RFP was issued, Mr. Laabs had proposed obtaining this contract as a sole-source (non-bid) exception to the RFP process. He submitted his written justification for proceeding with a sole-source contract to Business Office staff. The Business Office and the then Vice Chancellor for Business and Finance rejected the request because of the change in scope of service and the substantial estimated cost, and because they did not feel that the services to be provided were so unique that only Jungle Marketing could provide them.

After the decision was made to follow the RFP process, the then Vice Chancellor for Business and Finance delegated responsibility for drafting the RFP to Mr. Laabs. The initial implementation RFP language, developed by Mr. Laabs, brought forward requirements that had been part of the original RFP for the development of the marketing plan. These requirements included a "complete" understanding of the TSBDCN system and a five-year experience requirement. Mr. Laabs' reasoning was that this RFP should be consistent with the first one and the language had been previously approved by TBR staff. It should be noted that no vendor

complaints had been received by TBR staff regarding the first RFP. Mr. Laabs submitted an RFP for implementation of the marketing plan to TBR's Director of Fiscal Services, who approved its issuance.

However, this RFP was deemed too restrictive and was withdrawn after a vendor who had not submitted a proposal complained to the then Vice Chancellor for Business and Finance that the RFP was too restrictive. As a result of the complaint, the RFP was modified. The "complete" understanding and five-year experience requirements were removed, and other revisions were included that resulted in a more competitive RFP. The RFP was then reissued. Two vendors responded to the revised RFP, including Jungle Marketing. The vendor who had complained did not respond to the revised RFP. Of the two proposals, Jungle Marketing was selected by the TSBDCN Marketing Committee.

A \$90,255 contract was subsequently executed between TBR and Jungle Marketing. Pursuant to the contract, Jungle Marketing conducted a two-day customer service training session in Nashville; provided brochures, peel-off window/door stickers, and a binder cover and spine design; and created a TSBDCN website. Marketing Committee members expressed a mixed assessment of the services and products received.

TBR and state procurement policies and procedures permit sole-source contracts in certain circumstances. Hence, it is not improper, per se, for staff of a state organization to seek to have a contract deemed a sole-source contract. However, sole-source contracts should be the exception and should meet certain tests to avoid the possibility of improper circumvention of the basic requirements that provide for open and fair competition with regard to state contracts. With regard to TBR, Policy 04:02:10:00, Section XV (B), states that sole-source purchases are to be made only when items are unique and possess specific characteristics that can be filled by only one source.

Since competition is always the preferable approach in awarding public contracts, whenever staff seeks sole-source status for a contract, it should be viewed with some critical skepticism by management. Obviously, engaging in sole-source contracts is not only an exception to the general rule of requiring bids, but it can call into question whether there are possible abuses related to the contract, such as undue influence by the vendor or collateral compensation to the staff seeking the sole-source status, either through a hidden interest in the contract or other forms of consideration, such as bribes.

Presuming that a sole-source contract is adequately justified and there are no abuses of power related to the designation as a sole-source contract, one cannot jump to the conclusion that there is anything sinister about a sole-source contract on its face. Also, just because staff seek to characterize a contract as meeting the requirements of a sole source contract and that effort is overruled by management, it cannot be presumed, without more evidence, that staff were engaging in abusive actions.

Examples of actions that would perhaps support a conclusion that staff had acted improperly in seeking a sole-source contract would be efforts to conceal the true nature of the contract so that it appeared to be unique when it in fact was not. This would entail more than

just a difference of opinion about whether the services were unique, since such a determination is always subjective to some degree. It would involve more blatant misrepresentations of the actual services to be provided.

Other examples of bad faith would be efforts to override or circumvent the RFP process by deceit. This would not include just the act of staff seeking to classify the contract as a sole-source contract, as long as the process to make it a sole-source contract was followed in good faith.

Since the reason for RFP processes is to ensure that the government receives the best deal for its limited resources, if the cost of the contract in relation to the services received seems to be excessive, one could legitimately ask if that outcome would have been avoided through an appropriately administered RFP process. Once again, the value of services, as opposed to goods or commodities, is somewhat subjective. Still, it is incumbent on staff seeking exceptions to the RFP process to consider carefully the cost of the contract versus the value of the services and their availability on the open market.

It is also important to determine whether the need for the services in question was well established before the pursuit of the vendor was launched. In other words, there was a need that the vendor filled, rather than a situation in which a need was created to justify the employment of the vendor.

Perhaps a very telling factor in any situation would be the actual experience of the staff person in question. The person may not have understood the rules initially, but after being made aware of them, did the person comply with them? Another important factor is the extent to which the process was open within the organization. Did the person seeking the sole-source status also seek advice from others who are usually engaged in procurement transactions? Or did he or she tend to shy away from any additional scrutiny? If the person seeking the sole source status claims to be unfamiliar with the procurement process, it would be natural for him or her to seek guidance in light of inexperience in this area.

This is not meant as an exhaustive listing of factors indicating abuse of a contract. Of course, the most damaging factor would be if the staff seeking sole-source status had received or would expect to receive some sort of extra compensation from a third party for achieving sole-source status for the contract. When such circumstances are proved, the matter should be referred to the appropriate authorities for consideration of legal action.

In matters surrounding the propriety of a contract, each situation must be viewed on the basis of its own facts. There are many legitimate questions that can be asked about the RFP procurement process and results. Answering such questions, which include issues of policy compliance as well as ethical propriety, has entailed constructing a framework of what would constitute ethical behavior and piecing together the history of the RFPs and contracts through interviews and examination of existing documentation.

In the present case, based on presently available information, the actions of Mr. Laabs with regard to the hiring of Jungle Marketing clearly were not abusive. This was not a situation

where Mr. Laabs created a need to justify the employment of Jungle Marketing. Instead, the need for these services was established by the TSBDCN Directors and not by Mr. Laabs. After being delegated the responsibility to hire a company to develop a marketing campaign, Mr. Laabs sought guidance from TBR's Business Office at the onset of the procurement process. There are several examples of Mr. Laabs seeking guidance from others within TBR who would be knowledgeable of the proper procedures for handling the contracts. When Mr. Laabs was given direct instructions on how to handle the contracts, he followed them. Mr. Laabs made no efforts to conceal the true nature of the contracts, nor did he misrepresent any aspects of the transactions related to the contracts. Mr. Laabs did not override or circumvent the RFP process.

Regarding the contracts, each contract contained different requirements and involved differing degrees of effort on the part of Jungle Marketing. The development phase would naturally be more difficult and would require more work on the part of Jungle Marketing than implementing an already developed marketing plan. According to Mr. Laabs, the five-year requirement was his effort to satisfy the wish on the part of some Marketing Committee members to hire a company with experience. The experience requirement pertained to working with SBDCs, preferably at the national level. Since Jungle Marketing purported to have 12 years' experience, it appears that Mr. Laabs did not tailor the experience requirement to fit only Jungle Marketing. The original language of the RFP, which contained the "complete understanding" and five-year experience requirements, was reviewed and approved by the TBR Director of Fiscal Services. At the time of the first RFP and contract, no vendor complained about any of the requirements.

Although the first RFP for the second contract (the implementation contract) was later deemed to be too narrow in its requirements, it contained terms that were in the development RFP and that had apparently been considered competitive by TBR officials at the time. After a vendor complained, some of the terms in the development RFP, which had been carried forward into the implementation RFP, were deemed too restrictive. The RFP was withdrawn, revised, and reissued. This matter appears to have been appropriately handled.

With regard to cost, although the value of services is subjective, it appears that based on e-mail correspondence and the statements of Lead Center staff and Marketing Committee members, the development of the various deliverables did involve substantial effort on the part of Jungle Marketing.

Clearly, the most serious charge in the allegations is the possible use of a condo owned or controlled by the vendor. It is indisputable that the vendor offered the use of a condo to Mr. Laabs as evidenced by the vendor's e-mail to Mr. Laabs, dated November 7, 2002. According to both Mr. Laabs and the vendor, Mr. Laabs told the vendor that such an offer was improper, and Mr. Laabs never stayed in the condo. However, there is not an e-mail from Mr. Laabs back to the vendor refusing the offer and stating that it was improper. On the other hand, Mr. Laabs had not deleted the vendor's e-mail from his computer in an attempt to cover up the offer. This e-mail was not received by Mr. Laabs early in the contracting process when Mr. Laabs was first considering which contract process to follow. Rather, it was received within two months of the expiration of the contract period of the second contract, and it appeared to be part of frequent e-

mail communications between Mr. Laabs and Mr. Smith. Other e-mail correspondence between Mr. Laabs and Mr. Smith that we reviewed appeared to be business related.

We explored several avenues in trying to determine whether Mr. Laabs had used a condo as offered by the vendor in the e-mail. Based on the statements of otherwise disinterested third parties who would have knowledge of such use, there was no such use, and there are uncertainties as to whether the vendor even had access to such a condo. Of course, just because the vendor may not have owned or had access to a condo like the one described in the e-mail, such an offer could still be construed as an attempt to interfere with the proper contracting policies of the board. Still, there is no evidence presently available that Mr. Laabs in fact accepted the vendor's offer or that the offer unduly influenced Mr. Laabs' efforts in obtaining the services deemed necessary for the center by Mr. Laabs and others associated with the center. Based on presently available information, Mr. Laabs did not personally benefit as a result of Jungle Marketing receiving the contracts.

There were other problems with the process of the contracts that are addressed in the report. However, it does not appear that these problems were due to any override of controls by Mr. Laabs. These situations certainly did not help the overall appearance of the matters surrounding the contracts at issue, but they do not appear to be situations caused or used by Mr. Laabs to circumvent the RFP process.

As part of our review of the contracts, we noted weaknesses in TBR's purchasing policy and procedures. Mr. Laabs did not create these weaknesses, nor did he contribute to them or exploit them. The auditors also noted non-compliance with TBR's policy requirements that written bid evaluations be prepared and be made available for public inspection and that receiving reports be maintained that document the quantity of items received. These requirements applied to Mr. Laabs and other Lead Center staff, but he and the others did not comply with them, apparently due to a lack of knowledge.

1. TBR's purchasing policy did not establish a defined process for reviewing and approving RFPs issued under TBR's authority with a specific focus, as part of that process, to establish that the RFPs were appropriately competitive. After a vendor complained about the restrictive nature of the implementation RFP, the then Vice Chancellor for Business and Finance reviewed the RFP and determined that it was restrictive, although the Director of Fiscal Services, who reported to the Vice Chancellor for Business and Finance, had approved the issuance of the RFP. Subsequently, the then Vice Chancellor for Business and Finance, the Director of Fiscal Services, and Mr. Laabs worked together to revise the RFP, with the effect of making the RFP less restrictive. The RFP was revised and then issued. A more structured pre-issuance review process would enable the potentially restrictive nature of RFPs to be detected and corrected prior to issuance. In addition, the utilization of a pre-proposal conference as part of the RFP procurement process would provide vendors the opportunity to formally express concerns, issues, and complaints and to have those matters resolved prior to their submission of proposals.

2. TBR's purchasing policy required that an RFP be sent to the vendors on the vendor list 14 days before the bid opening date. However, TBR's policy did not require documentation of the mailings and Business Office staff did not document the mailings. Thus, the auditors could not confirm that the RFPs were mailed on the proper dates to all the vendors on the vendor list. The auditors reached all but three vendors who apparently had been sent the RFP through the mail and who had not responded. However, this procedure did not result in useful information since the vendor representatives told the auditors that they could not confirm whether they had received the RFPs because none of the vendors could locate any records related to the RFPs and no one remembered receiving or responding to them. The vendor representatives also stated that their companies did not retain an RFP or any information related to it if they did not submit a proposal in response to the RFP. The responsibility for transmitting copies of the RFP to the vendors rested with the Business Office, not the Lead Center.
3. TBR's purchasing policy did not address documenting when proposals were received, and such documentation was not maintained. A documented procedure regarding appropriate dating becomes critical when bid proposals are disqualified on the grounds that they were received late. In the case of proposals submitted in response to the first RFP, one proposal was marked by staff that it was received late and was disqualified. Moreover, that RFP directed vendors to submit their proposals to the TSBDCN State Director. This procedure could have enabled the State Director, or other Lead Center staff, to attempt to improperly influence the procurement process by removing competing proposals from consideration before the public bid opening or by disqualifying proposals as late submissions when they were in fact submitted on time. Presumably, vigilant vendors would attend or monitor the public bid opening and would promptly detect any improper omission of their bids. However, effective internal controls would insulate the procurement process from staff that might have an interest in the outcome.
4. TBR's purchasing policy did not explicitly address documenting the evaluation process for proposals, nor did TBR's policy address the number or composition of the evaluation team. TBR's purchasing policy and procedures stated that the invitation-to-bid document will specify the date the bid evaluations would be made available for viewing, and this language made evident that written bid evaluations should be prepared and made available for public inspection. However, no evaluation forms based on the criteria and scoring percentages stated in the RFP were prepared for the two bids to develop the TSBDCN marketing plan, and the auditors could not identify any reviewer other than Mr. Laabs. Jungle Marketing was the low bidder and the only responsive bidder to the RFP with regard to the experience requirement. In contrast, for the two bids to implement the TSBDCN marketing plan, the TSBDCN Marketing Committee completed evaluation forms that reflected the criteria and scoring percentages stated in the RFP, and the evaluation process was well documented.

In an appropriately structured procurement process, Business Office staff would provide explicit directions and guidance to reviewers relative to the evaluation process and proper documentation. However, with regard to the evaluation of bids for the marketing planning work (the first contract), TBR Business Office staff did not provide Mr. Laabs with direction or guidance in these matters. Business Office staff described the evaluation process as decentralized, with the responsibility for completing evaluations and documenting the process residing with the individual departments. Mr. Laabs told the auditors he was not familiar with the RFP process or documentation related to bid evaluations, and that he received little guidance from the Business Office in these matters.

5. TBR's purchasing policy did not address mailing "Notice of Intent to Award" letters to all the other vendors on the vendor list once a decision had been made to award the contract to one vendor. In the case of the first RFP for the development of a marketing plan (the first contract), a "Notice of Intent to Award" letter was sent to the other vendors, but in the case of the RFP for the implementation of the marketing plan (the second contract), no letter was sent to the losing vendors. The "Notice of Intent" letter is important because its date establishes the beginning of a time frame for official protests. The responsibility for sending these letters rested with the Business Office, not the Lead Center.
6. TBR's purchasing policy required that when any supplies, equipment, or materials are received, the receiving agent will make a written certification that the items received were equal in quality and quantity to those requisitioned, and also that complete records on all receiving reports will be maintained in order to provide a clear audit trail on the receipt of all purchases. However, Lead Center staff did not retain shipping documentation that showed the quantity of brochures and peel-off door/window stickers received. Mr. Laabs stated that brochures and stickers were received, although he could not confirm the number. He provided the auditors with a copy of the brochure and the peel-off door/window sticker. In addition, the Center's account manager provided shipping documentation that she had obtained from a box of the brochures that remained in the office, although that document did not record the quantity shipped. The responsibility for documenting receipt of goods ordered rested with the Lead Center, not the TBR Business Office.

This review further determined that the cost of the development contract (the first contract) exceeded the \$45,000.00 maximum liability stated in the contract. TBR paid \$46,048.21 for Jungle Marketing's work under the contract, which exceeded the contract limit by \$1,048.21 (2%). The overcharges were the result of two types of errors. First, travel expenses were erroneously charged to the contract by Business Office staff without verification that total charges would remain within the contract limit. Second, hotel expenses were billed directly to TBR's Central Office and thus were erroneously not charged to the contract by TBR Business Office staff, although they should have been.

Unlike the development contract, the implementation contract (the second contract) cost less than the contract limit of \$90,255.00 by \$9,774.27 (11%).

TBR management, MTSU management, TSBDCN Directors, and Lead Center staff should carefully scrutinize future requests for the procurement of goods and services to determine whether such goods and services are needed, and if needed, are obtained with acceptable quality at a reasonable cost. They also should determine whether such goods and services could be provided by state employees and through the use of state resources with acceptable quality at a lower cost than outside vendors.

In comparing TBR's purchasing policy with state laws and rules and regulations, we determined that TBR's policy had not been revised to incorporate current requirements. Such policies are required to be submitted to the Board of Standards for review and approval by Section 12-3-103, *Tennessee Code Annotated*.

THE DEVELOPMENT CONTRACT

Genesis of Idea for a Marketing Plan

According to Mr. Laabs, the then TSBDCN State Director, in October 2000 at a meeting in Chattanooga, Tennessee, of the Small Business Development Center (SBDC) Directors from across the State of Tennessee, he and the other directors were in agreement that a vendor should be hired to develop a TSBDCN marketing plan to create more awareness of Tennessee's Small Business Development Centers. Other TSBDC Directors we interviewed concurred that they met in October 2000 and agreed that a vendor should be hired to develop a TSBDCN marketing plan. Both Mr. Laabs and Mr. James Frakes, the Chairman of the TSBDCN Marketing Committee, told us that the TSBDC directors desired to hire a marketing company that had experience with SBDCs.

Based on our interviews with the Marketing Committee members we were able to contact and interview about this matter, it appears that Mr. Laabs was not the principal proponent for developing and implementing a TSBDCN marketing plan and hiring an outside firm to do the work. As explained to us, the perception was that when the Lead Center was located at the University of Memphis, it was not as helpful as it could have been relative to the other TSBDCs in the state and each TSBDC operated independently of the others. When the Lead Center was relocated from the University of Memphis to TBR's Central Office in Nashville, and when Mr. Laabs was appointed interim, and later permanent, State Director, the TSBDC Directors realized that there was an opportunity for a fresh start. Apparently, the perceived need was for a marketing campaign to promote the resources and services available at the TSBDCs and to build a larger client base. In addition, the TSBDC Directors felt that the TSBDCs did not have sufficient internal resources to mount a marketing campaign and therefore the hiring of an outside vendor seemed a reasonable route to pursue. The Marketing Committee members stated that Mr. Laabs did not originate or push the idea of developing a marketing plan and did not pressure them to hire Jungle Marketing.

Development of the Request for Proposal (RFP)

Mr. Laabs stated that he was not knowledgeable about the RFP process and that he sought guidance from TBR Business Office staff, who directed him to a sample RFP on their website. Mr. Laabs told us that he had no prior experience with developing RFPs of any type.

To determine the nature and extent of Mr. Laabs' experience with the RFP procurement process, we contacted Mr. David Whipple, who had been the part-time Business Manager at the TSBDCN Lead Center when it was located at the University of Memphis. Mr. Whipple stated that Mr. Laabs had no involvement in developing or issuing RFPs while Mr. Laabs worked for the Lead Center in Memphis. In fact, Mr. Whipple stated that the Lead Center did not issue any RFPs during Mr. Laabs' tenure because the Lead Center did not make purchases that were over the dollar amount that would have required an RFP.

Mr. Laabs stated that he developed the RFP for the TSBDCN marketing plan and that, in his development process, he did not obtain input from the other TSBDC Directors and he did not ask them to review the final product before the RFP was issued.

According to the Marketing Committee members who we interviewed and who recalled the first contract to develop a TSBDCN marketing plan, because the TSBDC Directors were dispersed across the state and were very busy with their own operations, they left the drafting of the RFP to Mr. Laabs. They said that they regarded Mr. Laabs as their agent in carrying through their wishes to hire an outside vendor to develop the marketing plan. The committee members stated that they did not provide any guidance to Mr. Laabs, other than desiring a vendor with experience, and that they did not review the RFP before it was issued. The committee members told us that in retrospect it would have made sense for them to participate in the drafting of the RFP and in reviewing the final version before it was issued. The committee members stated that they would be more proactive in the future, should there be other initiatives to hire an outside vendor through the RFP process.

Mr. Laabs stated that he did not write the RFP in such a manner that only Jungle Marketing qualified to submit a bid. Mr. Laabs said that he submitted the RFP to Ms. Deanna Hall, the Fiscal Director in TBR's Business Office. Both Mr. Laabs and Ms. Hall told us that they did not recall any specific discussion on their part related to whether the RFP was restrictive or competitive in nature.

Ms. Hall indicated that they both tried "very hard" to make sure that they followed the relevant purchasing and bid procedures to purchase the services needed. According to Ms. Hall, she believed that the policy was being followed and that more than one vendor could provide the service, and thus she allowed the RFP to be issued.

Mr. Laabs, as a department head, was responsible for drafting the RFP and submitting it to TBR's Business Office for review and approval. Ms. Hall, as Director of Fiscal Services, was in charge of reviewing and approving the RFP for issuance. Ms. Hall stated that the then Vice Chancellor for Business and Finance had delegated to her the responsibility for reviewing and approving the issuance of all RFPs on behalf of the Business Office, including those for the Lead

Center, and that she was responsible for bringing any areas of concern that she might have to the attention of the then Vice Chancellor for Business and Finance. She stated that her review of the Lead Center's RFPs encompassed examining the scope of service from a "reasonableness" standpoint and ensuring that the project budget was at least 20% of the evaluation score.

Development of the Vendor List

We examined the vendor list for compliance with TBR's policy, which required written sealed bids to be solicited from 15 vendors or the number of vendors on the vendor list, whichever was less. According to Ms. Hall, in practice she insisted on 15 vendors except in rare circumstances where the service was of such a nature that 15 vendors couldn't be identified. Ms. Hall stated that the development contract was not of that type because there were many marketing firms available.

The vendor list contained the names and addresses of 15 marketing companies. Based on our interviews, the vendor list was compiled by Ms. Hall with the assistance of Mr. Laabs.

Mr. Laabs stated that he sent an e-mail to the "directorlist" maintained by the National Association of Small Business Development Centers (NASBDC). Mr. Laabs' e-mail, dated December 1, 2000, stated, "The Tennessee SBDC is looking to send out a Request for Proposals on the development of a marketing plan for our network. I would be interested in hearing from any state that has had such a plan done and what firm they used."

According to Mr. Laabs, he received e-mail responses from four organizations: the Florida State Director, the Oregon State Director, the Minnesota State Director, and the NASBDC Executive Director. We reviewed the four e-mail responses. The Florida State Director did not suggest a marketing firm. The Oregon State Director suggested Conkling, Fiskum & McCormick. The Minnesota State Director suggested Aistrup Associates. The NASBDC Executive Director recommended two firms: MarketShare and SteadyRain. Mr. Laabs stated that he forwarded the names and addresses for these four companies to Ms. Hall.

Mr. Laabs also stated that he forwarded at the same time the name and address of Jungle Marketing to Ms. Hall. Jungle Marketing is a Colorado-based marketing firm located in Colorado Springs.

According to Mr. Laabs, he did not have any prior friendship or personal business relationship with Mr. Robert Smith, the owner of Jungle Marketing. Mr. Laabs told us that he first came in contact with Mr. Smith at a conference for small business development centers in the late 1990s. According to Mr. Laabs, he was impressed by Mr. Smith's marketing seminar at the conference. Mr. Laabs further stated that when he was with the TSBDCN Lead Center at the University of Memphis, he arranged for Mr. Smith to conduct two marketing seminars, one in Memphis and one in Knoxville, in 1998 or 1999. Mr. Laabs stated that he attended Mr. Smith's presentations in both Memphis and Knoxville. Mr. Laabs further stated that based on his positive impression of Mr. Smith's presentations, he believed that Mr. Smith's company should receive an RFP for the TSBDCN marketing plan. Thus, before the origination of the idea for a TSBDCN marketing plan, Mr. Laabs had prior satisfactory experience with Jungle Marketing.

With regard to the contracts between TBR and Jungle Marketing, Mr. Laabs and Mr. Smith described their relationship as a business relationship and not a personal friendship.

Ms. Hall placed four of the five companies forwarded to her by Mr. Laabs on the vendor list. Ms. Hall stated that she then identified 11 other companies from a previous vendor list, which had been compiled for another RFP. Ms. Hall could not recall why she included only four of the five companies forwarded to her by Mr. Laabs, nor could she recall her methodology for selecting 11 companies from the 15 on the prior vendor list.

The end result was a vendor list consisting of 15 companies. Of the 15 companies on the vendor list, eight were in-state and seven were out-of-state. Of the eight in-state companies, seven were located in Nashville and one was located in Brentwood. The seven out-of-state companies were located in Colorado (1), Georgia (3), Oregon (1), Missouri (1), and Virginia (1). (See Exhibit 4.)

Mailing the Request for Proposal to Vendors

According to TBR's Business Office staff, TBR's Business Office administers the copying and mailing of RFPs to identified vendors. Ms. Hall stated that she or her staff would have prepared the RFP for mailing on the date specified in the timeline outlined in the RFP and would have taken all of the packages to the TBR mail room at one time. Although Ms. Hall did not have specific recall related to this RFP, she said that to her knowledge, the RFP mailing followed the normal process.

TBR's purchasing policy required that an RFP be sent to vendors on the vendor list at least 14 days before the bid opening date. According to the timeline outlined in the RFP for the marketing plan, the RFP was to be issued on December 8, 2000, and the proposals were to be opened 14 days later on December 22, 2000. However, TBR's purchasing policy did not require that the mailing be documented, and TBR Business Office staff did not document the mailing, either by a log entry, a transmittal letter, or any other form of documentation. Thus, we could not confirm that the RFPs were mailed on the proper date to all the vendors on the vendor list. We reached all but three vendors who apparently had been sent the RFP through the mail and who had not responded. However, this procedure did not result in useful information since the vendor representatives told us that they could not confirm whether they had received the RFPs because none of the vendors could locate any records related to the RFPs and no one remembered receiving or responding to them. The vendor representatives also stated that their companies did not retain an RFP or any information related to it if they did not submit a proposal in response to the RFP.

Receipt of Proposals

TBR's purchasing policy did not address or require documenting when proposals are received by the department responsible for the procurement, and documentation was not maintained. For this RFP, two proposals were received prior to the bid opening date and time, which was December 22, 2000, at 9:00 a.m. A third proposal was marked as received late. For the two proposals received prior to the bid opening, there is no indication when the proposals

were received. For the one proposal received late, the indication of when the proposal was received is an unsigned handwritten note on the FedEx mailing slip, "Arrived in office 12/22/00 12:05 pm." (See Exhibit 5.)

The two proposals that were received prior to the bid opening date were from Jungle Marketing, Inc., located in Colorado Springs, Colorado; and Tom Jackson and Associates, located in Nashville, Tennessee. The transmittal letter with the Jungle Marketing proposal was dated December 14, 2000. The transmittal letter that accompanied the proposal prepared by Tom Jackson and Associates was dated December 22, 2000. The Jungle Marketing proposal was \$42,000 plus travel expenses. The Tom Jackson and Associates proposal was \$65,500 plus travel expenses. Therefore, based on the proposals, Jungle Marketing's bid was \$23,500 less than the bid by Tom Jackson and Associates.

The third proposal, which was marked as received after the bid opening time, was from SteadyRain, Inc., a company located in St. Louis, Missouri. Although the SteadyRain proposal was for \$32,000, the company did not meet the experience requirement. In addition, the proposal did not include travel expenses. Because the SteadyRain proposal was received after the bid opening time, it was not considered.

We noted that the RFP directed vendors to submit their proposals to the TSBDCN State Director. This procedure could have enabled the State Director, or other Lead Center staff, to attempt to improperly influence the procurement process by removing competing proposals from consideration before the public bid opening or by disqualifying proposals as late submissions when they were in fact submitted on time. Presumably, vigilant vendors would attend or monitor the public bid opening and would promptly detect any improper omission of their bids. However, effective internal controls would insulate the procurement process from staff that might have an interest in the outcome.

Bid Opening

The bid opening, scheduled for December 22, 2000, at 9:00 a.m., occurred on December 22, 2000, at 9:00 a.m., as documented by two completed forms, a "Bidders Attendance and Registration" form and a "Bid Analysis & Information" form. The "Bidders Attendance and Registration" form showed that Mr. Tom Jackson, the CEO of Tom Jackson and Associates, attended the bid opening. Mr. Jackson was the only vendor representative who attended the bid opening.

As indicated on the "Bid Analysis & Information" form, the bid opener was Mr. Laabs and the witness was Mr. Pat Couch, TBR's Assistant Director for Fiscal Services. The form records the bid amounts for both Jungle Marketing and Tom Jackson and Associates as \$42,000 and \$65,500, respectively.

TBR's purchasing policy did not require bids to be date and time stamped or other documentation to be maintained as to the date and time when the bids were received. Since the bids from Jungle Marketing and Tom Jackson were opened on December 22, 2000, at 9:00 a.m.,

according to TBR's documentation, they were received prior to the bid opening date and time. As of the date of this report, the policy had not been changed.

However, the question as to when the SteadyRain proposal was actually received in the TBR Offices could not be conclusively resolved. The available evidence is the unsigned handwritten note that the bid arrived on December 22, 2000, at 12:05 p.m., three hours and five minutes after the 9:00 a.m. bid opening time. TBR staff retained the FedEx mailing slip, dated December 21, 2000. Neither Ms. Hall nor Mr. Laabs could identify the author of the handwritten note. However, Ms. Hall told us that at a bid opening, Business Office staff routinely checks incoming mail for bids immediately before the bids are opened.

According to Mr. Laabs, he received SteadyRain's proposal in the afternoon after the bid opening, which occurred in the morning at 9:00. He stated that he took the unopened SteadyRain proposal to TBR's Business Office and was told by staff that the proposal was late and could not be considered. Ms. Hall confirmed that Mr. Laabs brought SteadyRain's proposal to the Business Office in the afternoon after the bid opening. She said that Mr. Laabs told her that he had received a late proposal and that he asked her what to do with it. She stated that she told him that the proposal could not be considered because it had arrived after the bid opening and that he should retain the proposal as documentation. Ms. Hall said that this was the first late proposal received at the TBR Central Office in her experience and that the normal procedure for dealing with a late proposal would be to retain the proposal.

SteadyRain's proposal did not include a transmittal letter. We contacted SteadyRain, and a SteadyRain representative told us that no one at the company recalled SteadyRain's proposal and no documentation could be located pertaining to their proposal.

In the absence of further information, it appears that SteadyRain's proposal was sent from St. Louis, Missouri, on December 21, 2000, by FedEx. The FedEx mailing slip did not contain the pick up time or a guaranteed time of delivery. The FedEx mailing slip stated that the package was a "priority overnight" delivery and that the delivery was to occur on December 22, 2000. It appears that the proposal did not arrive in TBR's Central Office until December 22, 2000, at 12:05 p.m., and that Mr. Laabs was informed by TBR's Business Office staff that it could not be considered because it had arrived late. Therefore, the exclusion of SteadyRain's proposal from consideration appears appropriate.

Evaluation of Jungle Marketing and Tom Jackson Proposals

At the time of our review, TBR's purchasing policy did not explicitly address documenting the review process for proposals. As of the date of this report, the policy had not been changed. However, TBR's purchasing policy and procedures stated that invitations to bid will specify the date bid evaluations would be available for viewing, and this language made evident that written bid evaluations should be prepared and made available for public inspection. Despite this language in TBR's policy, no evaluation forms based on the criteria and scoring percentages stated in the RFP were prepared by the reviewers. Notwithstanding the lack of written bid evaluations, it appears that Jungle Marketing was the low bidder and the only responsive bidder to the RFP with regard to the experience requirement.

Ms. Hall further said that she was not aware of any specific requirements for documenting the evaluation of proposals in TBR's purchasing policy and procedures. According to Ms. Hall, she did not provide Mr. Laabs any guidance or direction regarding the evaluation process or documentation, but instead left it up to him because she knew he had a marketing committee that she believed would be responsible for evaluating proposals.

Mr. Laabs initially told us that the two proposals were reviewed by the TSBDCN Marketing Committee, a voluntary subgroup of the Tennessee SBDC Directors, in January 2001. Mr. Laabs identified the chairman of the Marketing Committee as Mr. James Frakes, the SBDC Director at Dyersburg State Community College. Mr. Laabs further identified the four other members of the Marketing Committee as Ms. Carol Clark, the then SBDC Associate Director at Austin Peay State University; Mr. Patrick Geho, the SBDC Director at Middle Tennessee State University; Mr. William Latham, the SBDC Director at Tennessee State University; and Mr. Gene Odom, the SBDC Director at the International Trade Center in Memphis.

We were able to interview four of the five Marketing Committee members identified by Mr. Laabs. The fifth member, Mr. Odom, had retired and moved to France, and thus was not available to be interviewed.

None of the four Marketing Committee members we interviewed could recall a meeting to evaluate proposals for the development of a marketing plan, a telephone conference, or any other type of review. Mr. Frakes, the Marketing Committee chairman, stated that he had no further involvement in the procurement process because he was sick and in the hospital during the time period when the proposals would have been evaluated. Mr. Geho stated that after the Marketing Committee met, decided to hire an outside vendor to develop the TSBDCN marketing plan, and delegated the matter to Mr. Laabs, he had no further involvement in the procurement process. He said that his next involvement with developing the marketing plan was his participation at the brainstorming seminar conducted by Jungle Marketing after the company had been hired to prepare the marketing plan.

Ms. Clark stated that she was not involved with the Marketing Committee until July 2001, after the contract had been awarded to Jungle Marketing and after Jungle Marketing had conducted the brainstorming seminar and produced the Genimation [*sic*] Report, the two deliverables required by the contract. "Genimation" was the name Mr. Smith gave to Jungle Marketing's report that contained the proposed TSBDCN marketing campaign. Mr. Latham stated that he did not review the proposals because he did not attend the Marketing Committee meetings due to other obligations.

Ms. Clark told us that Ms. Laurie Swift was the SBDC Director at Austin Peay State University at that time and was also a member of the TSBDCN Marketing Committee at the time of the RFP for developing the TSBDCN marketing plan. We contacted Ms. Swift and she stated that she did not have any involvement with the committee because she was totally absorbed with fund raising related to her SBDC.

The only evidence we could find of such a meeting was a single typed paragraph in the Business Office's contract file that indicated that a committee had reviewed the proposals and recommended Jungle Marketing. That paragraph states, in its entirety,

The committee reviewing the proposals felt unanimously that Jungle Marketing Incorporated had a greater working knowledge of the SBDC program, had greater experience in developing such plans for organizations such as SBDC's, and their proposed price was considerably cheaper than the other proposal. In addition, the committee felt that Jungle Marketing's approach to gather information was more appropriate to our needs.

The document evidently was addressed to Ms. Hall, TBR's Fiscal Director, because the salutation is to "Deanna," Ms. Hall's first name. The document did not contain any indication of authorship or date. The document also did not identify the committee members. Mr. Laabs stated that he did not know the author of the paragraph but that it was possible that he was the author. Ms. Hall told us that she received the document from Mr. Laabs. Ms. Hall told us that after the two proposals had been received, Mr. Laabs told her that Jungle Marketing had been selected. According to Ms. Hall, during their conversation she told Mr. Laabs that she needed documentation of the decision. According to Ms. Hall, Mr. Laabs later provided her the paragraph cited above. However, she could not recall how much time elapsed between her asking Mr. Laabs for documentation and his providing her with the paragraph cited above. She said that she received the paragraph prior to the contract award.

An additional complication is that no one completed an evaluation form for either proposal. Thus, we could not determine that the criteria or the ranking percentages specified in the RFP were used. The RFP included four specific criteria, as follows: (1) A working knowledge of the Small Business Development System; (2) Develop Marketing Plan; (3) Experience; and (4) Budget. Each criterion was assigned a ranking percentage of 25%. When we asked Mr. Laabs why he had not obtained completed evaluation forms from the Marketing Committee members, he said that he did not know that such documentation was required until he received a memorandum from Ms. Hall, which stated the requirement, in August 2001, after the development contract had expired. Ms. Hall stated that she would have expected Mr. Laabs to submit documentation of the bid evaluations but that she did not provide him guidance on the front end and asked for documentation only after he told her that Jungle Marketing had been chosen.

Mr. Laabs could not locate meeting minutes or any other documentation that would indicate that reviewers had met, evaluated the two proposals, and recommended Jungle Marketing.

Because of the apparent inconsistencies between the statements by Mr. Laabs and those of the Marketing Committee members, we interviewed Mr. Laabs again about the evaluation process. In that interview, Mr. Laabs stated that he believed he had a discussion about the proposals with somebody, but he could not recall with whom he had the discussion. He stated that the discussion might have been with a Lead Center staff member instead of other TSBDC Directors on the Marketing Committee. Mr. Laabs stated that ultimately the decision would have

been his to make, as Lead Center Director, and that the primary determinatives for him were that Jungle Marketing was the only responsive bidder and also was the lowest bidder.

Mr. Laabs again stated that he could not identify the author of the paragraph recommending Jungle Marketing, quoted above. Mr. Laabs said that if he had written it, it would be on his computer. He said that he looked for the paragraph on his computer and did not find it, which indicated to him that he did not write it. Mr. Laabs further stated that if he had written the paragraph, he would have signed it. Because the paragraph was unsigned, he concluded that he did not write it. He said that it was possible that Ms. Hall asked him for support for the decision to contract with Jungle Marketing but he did not remember her doing so. Mr. Laabs further stated that he did not recall asking any of his staff to prepare such support and provide it to Ms. Hall, but he could have done so; and he did not remember submitting the paragraph to Ms. Hall himself, although he might have. Mr. Laabs observed that it was very difficult for him to recall events that occurred over four years ago.

Because the Marketing Committee members identified to us by Mr. Laabs were firm in their recollections that they did not participate in evaluating the proposals, we concluded that Mr. Laabs did not include the other Director members of the Marketing Committee in the evaluation process.

Mr. Laabs, by virtue of his position as the then Lead Center State Director, was a member of the committees whose meetings he chose to attend. In addition, the committee assignments for 2001 showed that Mr. Laabs was formally assigned to four of the five TSBDCN committees, including the Marketing Committee.

The importance of preparing and maintaining appropriate documentation is clearly indicated by the difficulty of trying to reconstruct events four years after the events occurred based on memories of the individuals involved. Because of the lack of documentation, we cannot confirm that the TSBDCN Marketing Committee, or any committee, met in December 2000 or January 2001, either in person or by phone; or reviewed and evaluated the two proposals submitted; or recommended Jungle Marketing. Based on presently available evidence, it is unclear whether anyone other than Mr. Laabs was involved in the final selection, but since there was only one responsive bid, there was apparently no judgment to be exercised in selecting Jungle Marketing. None of the TSBDCN Marketing Committee members objected to the selection process or the choice of Jungle Marketing. Instead, they told us that they were comfortable with Mr. Laabs making the selection and they were satisfied with Jungle Marketing.

Experience Requirement

From the standpoint of the minimum five-year experience requirement, only Jungle Marketing appeared to qualify for further consideration. Neither Tom Jackson nor SteadyRain had the requisite experience.

The RFP for the design and development of a strategic marketing campaign for the statewide Small Business Development Centers contained four criteria, the first of which was a working knowledge of the Small Business Development System. The RFP stated,

Bid participants must demonstrate in their proposal tangible work experience and a complete understanding of the small business development centers system operations, especially in Tennessee. Requirements also include a complete understanding of the TSBDC mission, target markets, training programs, community outreach programs, and any legislative issues that could impact the marketing and strategic direction of the center. The successful party should have worked with the SBDC system for at least 5 years, preferably on a national level.

We reviewed the three proposals submitted by Jungle Marketing, Tom Jackson and Associates, and SteadyRain. The Jungle Marketing proposal stated that Mr. Smith had worked extensively on a national level and for the past 12 years with Small Business Development Centers in designing programs to enhance the training programs they deliver to their clients. In contrast, the proposal submitted by Tom Jackson and Associates stated, "While we have not worked directly with a TSBDC, we have worked directly with every 'home' of the current centers and their satellites. . . ." SteadyRain's proposal, which was received late and was not included in the bid opening, stated, "The Contractor has over 3 years of experience working with the SBDC offices."

Contract Award

The term of the contract between TBR and Jungle Marketing was January 26, 2001, through May 31, 2001. The contract also stated, "In no event shall the TBR's liability including travel reimbursement to the Contractor under this Contract exceed \$45,000.00." The contract was signed and dated by the following three individuals on February 21, 2001: Mr. Laabs; Mr. David Gregory, TBR's Vice Chancellor for Administration and Facilities, for Chancellor Manning; and Mr. Smith. The contract term was later extended, by an amendment, to July 1, 2001. The amendment was signed by Mr. Smith on May 30 and by Dr. Sidney McPhee, then TBR's Vice Chancellor for Academic Affairs, for Chancellor Manning on May 31. The "not to exceed" amount was not increased by subsequent amendment. Dr. McPhee later took office as President of MTSU in August 2001.

From the "Payment Terms and Conditions" section of the contract, it is evident that TBR envisioned two specific deliverables, a two-day brainstorming session and a final report, because the contract stated, "TBR agrees to pay JMI payments of \$28,000 due upon completion of second day of brainstorming and the balance due of \$14,000 on the day of the delivery of the final report." According to the "Standard Terms and Conditions" section of the contract, the maximum compensation for travel, meals, and lodging could not exceed \$3,000. The combination of \$28,000, \$14,000, and \$3,000 totaled the \$45,000 maximum limit set in the contract.

Once the contract was awarded, Ms. Hall sent a "Notice of Intent to Award" dated January 9, 2001, to the vendors. At the time, Ms. Hall reported to Dr. John Rudley, then the TBR Vice Chancellor of Business and Finance. Ms. Hall did not report to Mr. Laabs, who was directly supervised by the TBR Vice Chancellor for Academic Affairs. The document stated,

Notice is hereby given of the intent of the Tennessee Board of Regents to award a contract to Jungle Marketing Incorporated in response to the request for proposals opened December 22, 2000, for design and development of a strategic marketing campaign for the statewide Small Business Development Centers.

According to Ms. Hall, no vendor filed a formal written protest or an informal complaint regarding the RFP or the contract award.

Contract Performance

The "Scope of Services" section of the contract stated,

The purpose of this marketing plan is to increase awareness of the TSBDC [Tennessee Small Business Development Centers] and its efforts to provide counseling and training across the state. The target groups include the general public, the TSBDC's public and private stakeholders, civic groups, and elected officials.

JMI [Jungle Marketing Incorporated] will develop an integrated marketing program detailing the various marketing efforts needed to insure the success of attracting more clients to the TSBDC network and to increase the awareness of the network to non-client groups. The plan will include strategies and tactics relative to the development of the plan as it relates to: (1) Direct marketing strategies, advertising, and Internet strategies; (2) Advertising; (3) Unique market positioning strategies; (4) Public Relations; (5) Outreach; (6) How to market training courses; (7) Marketing through the Internet; (8) Web Based Marketing; (9) Customer Service Marketing.

JMI will develop marketing strategies to reach each of the targeted audiences identified. In addition to the marketing strategies, the marketing plan will also provide an implementation plan, budgets, timelines, and miscellaneous supporting materials.

In fulfillment of its contractual obligations, two Jungle Marketing representatives conducted a two-day brainstorming seminar on February 21-22, 2001, in TBR's Central Office in Nashville, Tennessee. The Jungle Marketing representatives were Mr. Robert Smith, President of Jungle Marketing, and Mr. Mark Smith, Senior Consultant with Jungle Marketing. According to TBR staff, 18 individuals attended the seminar, including TSBDCN Lead Center staff, TSBDCN Directors, the Deputy District Director for the Small Business Administration, the Director of Small Businesses for the Tennessee Department of Economic and Community Development, and several small business owners.

After the brainstorming seminar, Mr. Smith, Jungle Marketing's President, presented his recommendations to the quarterly meeting of the TSBDCN Directors on March 22, 2001. On April 17, 2001, Mr. Smith presented Jungle Marketing's final report to TSBDCN and TBR staff.

We reviewed Jungle Marketing's report, entitled "The TSBDC Network Genimation Marketing Plan." The report included marketing strategies, implementation plans, and other supporting materials. Jungle Marketing also provided budgets for the projected deliverables with an estimated time to completion of four months.

Invoices and Payments

As noted above, the term of the original contract between TBR and Jungle Marketing was January 26, 2001, through May 31, 2001, and the contract term was later extended to July 31, 2001, by a contract amendment. The original contract also set a maximum contract limit of \$45,000, which was not increased by any subsequent amendment. The \$45,000 was divided into three components: TBR agreed to pay Jungle Marketing \$28,000 upon completion of the second day of brainstorming, \$14,000 upon delivery of the final report, and up to \$3,000 for travel expenses.

Jungle Marketing submitted five invoices for expenses incurred during the period January 26, 2001, through July 31, 2001. The five invoices totaled \$45,701.57. These invoices included some hotel expenses at Wingate Inn, located in Nashville, Tennessee. However, other Jungle Marketing hotel expenses, also incurred at the Wingate Inn, were billed directly to TBR's Business Office. The hotel direct bill amount was \$533.70. Jungle Marketing's hotel expenses were related to the two-day brainstorming session. TBR staff had recently established a direct bill relationship with Wingate Inn.

Overall, the total expenses submitted by Jungle Marketing were \$46,235.27. TBR paid all of Jungle Marketing's qualifying expenses for developing the TSBDCN marketing plan, which totaled \$46,048.21. The disallowed expenses of \$187.06 were for long-distance phone calls and some hotel and car-rental expenses. The reason for the disallowed hotel and car-rental expenses was that Mr. Smith's travel to Nashville included work on his part for another client. In recognition of the dual purpose of his trip, Mr. Smith charged TBR half his airfare charges, but he neglected to similarly divide his hotel and car-rental expenses. When reviewing his travel claim prior to approving payment, TBR Business Office staff noticed that he had mistakenly charged TBR the full cost for his hotel and car-rental expenses, and they made the appropriate adjustments to his travel claim.

Jungle Marketing's invoice dates and amounts, and the direct billed hotel expenses, as well as TBR's payment dates and amounts, are shown in Exhibit 6.

Because Jungle Marketing's total paid expenses of \$46,048.21 exceeded the "not to exceed" amount of \$45,000.00, we asked TBR staff to explain how Jungle Marketing could be paid \$1,048.21 (2%) more than the specified contract amount. According to Ms. Hall, the overpayment occurred because travel expenses were erroneously charged to the contract by Business Office staff without verification that total charges would remain within the contract limit. Also, hotel expenses were billed directly to TBR and thus were erroneously not charged to the contract by Business Office staff, although they should have been. Based on our review, Mr. Laabs was not responsible for the overcharges.

THE IMPLEMENTATION CONTRACT

Exploration of the Possibility of Sole-Sourcing the Implementation of the Marketing Plan

According to Mr. Laabs, the then TSBDCN State Director, he explored the possibility of entering into a sole-source contract with Jungle Marketing to implement the marketing plan, which Jungle Marketing had developed. He stated that he had discussed this with Ms. Deanna Hall, TBR's Director of Fiscal Services; and Ms. Christine Modisher, TBR's General Counsel. Mr. Laabs stated that he advocated a sole-source contract because he knew that Jungle Marketing had devoted a considerable amount of time and energy to understanding the TSBDCN and developing the TSBDCN marketing plan, and that another vendor would have to spend a great deal of time becoming familiar with the TSBDCN and the TSBDCN marketing plan, which would set back implementation time. However, after a review of the idea for sole sourcing by TBR staff, as detailed below, it was determined that the implementation of the marketing plan was not suitable for sole sourcing.

On May 29, 2001, Mr. Laabs sent a memorandum to Dr. Charles Manning, TBR's Chancellor, and Dr. Sidney McPhee, then TBR's Executive Vice Chancellor, with the subject "Sole Sourcing of Marketing Implementation." Mr. Laabs' memorandum stated his request for a sole-source contract and his rationale, as follows:

The Tennessee Small Business Development Center-Lead Center is requesting that the implementation of its recently developed marketing campaign be awarded as a sole source contract to Jungle Marketing Incorporated. The degree of awareness gained from the development of this campaign and the detailed requirement of cohesive implementation do not realistically allow for an outsider to the development to the campaign to implement it.

A considerable amount of time and energy was required by Jungle Marketing to understand all the needs of our particular program. The TSBDC requested and received from Jungle Marketing a proposed campaign that integrates specific recommendations to meet the marketing challenges that this network faces. Not only does this campaign make recommendations on how the TSBDC can reach new levels of awareness with the small business community, it addresses issues of improving perceptions to those seeking assistance. In addition, it puts forth suggestions on how the network can improve and facilitate its goals of expanding its partnerships with other organizations. Great care has been given to incorporate the strategic plans of the TSBDC network into the marketing efforts.

While there are significant detailed recommendations for the campaign, many of the fine details are still being worked out. The entrance of an additional consultant to this process would severely set back the implementation of this campaign. Months would be needed to bring another company current with our plan and not compliment TSBDC's timetable for implementation [*sic*].

In his memorandum, Mr. Laabs stated that, according to TBR policy, if the estimated amount of the purchase is \$1,500 or more, requisitions must be forwarded to the Purchasing Department for appropriate processing, and that, under normal circumstances, purchases will be based upon the principle of competitive bidding. Mr. Laabs further stated that goods and services may be procured without competitive bidding as sole-source or proprietary purchases only if such purchases are justified in writing and approved by the Chancellor of the Tennessee Board of Regents, and, further, that sole-source purchases are made only when items are unique and possess specific characteristics that can be filled by only one source.

Mr. Laabs enumerated eight factors to be considered in sole-source and proprietary purchases, including whether the cost of conversion—including but not limited to disruption, retraining, and replacement—precludes bidding competitively. The eight factors included in Mr. Laabs' memorandum were word for word the eight factors detailed in TBR's policy. Mr. Laabs concluded his memorandum as follows:

In my opinion, the awarding of this contract as a sole source is in keeping with the policies set forth by the Board for such situations. All authorized sole source may be procured utilizing non-competitive negotiation. If approved, this would be a sole source contract for the reasons given and would not be bid.

Your consideration of this matter is greatly appreciated.

Clearly, as reflected in this memorandum, Mr. Laabs was an advocate for sole sourcing the marketing implementation work to Jungle Marketing.

Mr. Laabs included with his memorandum an attached draft "Amendment to the Contract Between Tennessee Board of Regents and Jungle Marketing Incorporated." Mr. Laabs proposed that the existing contract between TBR and Jungle Marketing be amended in several areas. First, his amendment proposed that the scope of services would be expanded to include the implementation of the marketing campaign developed by Jungle Marketing. Second, TBR's maximum liability would be increased from \$45,000 to \$225,000, and a new payment schedule, which included 11 specified deliverables and a production management fee, would be added. Third, the current date of completion would be extended from July 31, 2001, to July 1, 2002.

On June 1, 2001, Ms. Hall, TBR's Director of Fiscal Services, sent a memorandum to Dr. John Rudley, TBR's then Vice Chancellor for Business and Finance, entitled "Sole Source for TSBDC." Ms. Hall wrote, "Although Jungle Marketing is not a sole source vendor (other companies could provide this service), we could justify a 'sole source' contract based on prior knowledge and considering the cost of 'starting over' with another company." However, Ms. Hall ultimately concluded,

Because the cost is expected to be \$180,000 (original contract for \$45,000 and they want to amend to \$225,000) and the scope of services is changing, I would not recommend amending the current contract. I think he should issue another RFP for additional services. [Emphasis added.] If he thinks they are best suited for the job, he can then choose Jungle Marketing based on all of the reasons he

has given. It is especially important that we consistently apply our reasoning for whether or not to bid for additional services.

According to notations on the memorandum, Dr. Rudley marked through the sole-source option and circled the RFP option. Above the sole-source option, Dr. Rudley wrote, “This option is not available.” Dr. Rudley stated his recommendation by writing below the RFP option, “Dr. Manning, Deanna [Ms. Hall] is correct. Another RFP is required and this is not sole source.” (See Exhibit 7.)

Thus, Mr. Laabs proposed a sole-source contract for implementation of the marketing plan, which had been developed by Jungle Marketing; after consideration, his proposal was rejected; and the decision was made to bid out the implementation of the marketing plan through the RFP process.

Chronology Related to the Request for Proposal (RFP), Which Was Later Determined to Be Too Restrictive

According to Mr. Laabs, after his proposal to sole-source the implementation of the marketing plan was rejected by Dr. Rudley, he developed an RFP for the implementation phase. Mr. Laabs stated that he did not solicit, and he did not receive, any input from Marketing Committee members, and that they did not review the RFP before it was mailed out. Based on TBR policy at the time of our review, Mr. Laabs was not required to solicit or receive input from the Marketing Committee. Furthermore, the Marketing Committee was not required to review the RFP before it was mailed out.

According to Ms. Hall, the Business Office did not specify an RFP development process or establish any requirements. Instead, the Business Office relied on the departments (in this case, the Lead Center) to institute appropriate procedures.

The Marketing Committee members we interviewed—Mr. Frakes, Mr. Geho, Ms. Clark, and Mr. Latham—confirmed that they were not solicited for input, did not provide input, and did not review the RFP before it was mailed out. The SBDC Directors we interviewed stated that they did not consider their exclusion in the development of the RFP inappropriate because they had delegated the RFP development to Mr. Laabs. As with the development RFP, Mr. Laabs said that he submitted the implementation RFP to Ms. Hall, the Fiscal Director in TBR’s Business Office.

Both Mr. Laabs and Ms. Hall told us that they did not recall any specific discussion on their part related to whether the RFP, as drafted, was restrictive or competitive in nature. As with the first RFP, Ms. Hall stated that they both tried “very hard” to make sure that they followed the purchasing and bid procedures to purchase the services needed. According to Ms. Hall, she remembered telling Mr. Laabs that if Jungle Marketing was truly a “sole source,” the bid process would prove that. Ms. Hall stated that she and Mr. Laabs discussed the fact that the purpose of an RFP was to solicit bids from more than one vendor and that the RFP could not be written so that only one vendor could meet the specifications. According to Ms. Hall, she believed that the policy was being followed, and that more than one vendor could provide the

service, and thus she allowed the first RFP for the implementation of the marketing plan to be mailed out.

As noted in our discussion of the development RFP, TBR's Business Office administered the copying and mailing of RFPs to identified vendors. Although Ms. Hall did not have specific recall related to this RFP, she said that to her knowledge, the RFP mailing followed the normal process in that the RFP would be mailed on the date specified in the RFP, which was June 11, 2001. At that time TBR policy did not require that the mailing be documented.

According to Ms. Hall, TBR's Business Office staff used the same vendor list for the RFP for implementation of the TSBDCN marketing plan as was used for the RFP for the development of the TSBDCN marketing plan. That vendor list included the names and addresses of 15 marketing companies, pursuant to Ms. Hall's application of TBR policy, which appeared to be appropriate.

Two of the 15 mailed RFP packages were returned unopened to the TBR Offices due to insufficient addresses, according to the U.S. Postal Service stamped notification on the front of the returned envelope. Our review showed that one of the companies, Matlock and Associates, Inc., located in Atlanta, Georgia, had moved in the interim between the two RFPs. According to the U.S. Postal Service stamped notification, the forwarding time had expired. The stamped notification included the company's new address. According to our review of the notification stamp, the RFPs were returned on June 15, 2001. Thus, the two RFPs were returned with sufficient time for them to be re-mailed to the correct address for the vendors, if Business Office staff had taken the initiative to resend them.

The U.S. Postal Service also returned the RFP package mailed to Dye Van Mol & Lawrence, located in Nashville, Tennessee. The return for insufficient address apparently occurred because the mailing label for Dye Van Mol & Lawrence contained the wrong zip code, 37203, instead of the correct zip code, 37219. All other aspects of the company's address were correct on the mailing label. The vendor list contained the incorrect zip code. The zip code was also incorrect on the vendor list for the RFP for the development of the marketing plan. When we contacted a local post office representative, we were told that generally speaking a wrong zip code would not bar delivery, but letter carriers have the discretion to return a piece of mail for insufficient address.

It should be noted that both returned packages were originally postmarked June 11, 2001. Because TBR staff told us that all the RFPs were mailed at one time, the June 11 postmark date indicates that all of the RFP packages were mailed on June 11, which corresponded with the date specified in the RFP timeline.

A third vendor, Hay Management Consultants, located in Atlanta, Georgia, informed TBR staff by letter dated June 18, 2001, that they would not be submitting a proposal in response to the RFP.

Of the remaining 12 vendors, only Jungle Marketing submitted a bid for the implementation of the marketing plan.

According to Dr. Rudley, then the Vice Chancellor for Business and Finance, officials from Tom Jackson and Associates called him to complain that certain language in the implementation RFP was too restrictive. Tom Jackson and Associates was a company on the vendor list that had received an RFP package. Dr. Rudley did not recall which official with Tom Jackson and Associates called him. He said it would have been either Mr. Tom Jackson or Mr. Bo Roberts. According to Dr. Rudley, of particular concern to the Tom Jackson and Associates official was the minimum five-year experience requirement. When we asked Mr. Laabs about the five-year experience requirement, he explained that the development RFP had included the five-year requirement, and he had carried that requirement forward in the implementation RFP.

Dr. Rudley told us that after he received the complaint from the Tom Jackson and Associates official, he reviewed the RFP and determined that it was too restrictive. At that point, Dr. Rudley sent a handwritten note to Ms. Hall, which stated,

Deanna, this RFP is not appropriate. Please see yellowing [highlighted material]. Ask Albert to pull it and start over. This is non competitive and is for a specific vendor Jungle Marketing.

Dr. Rudley's note is shown in Exhibit 8.

According to Ms. Hall, at Dr. Rudley's direction, TBR's Business Office staff withdrew the RFP by sending a "Notice of Rejection of Proposals and Intent to Issue a New RFP" dated July 2, 2001, to the vendors. That notice stated, in its entirety,

The proposals received in response to RFP 2001-11 for the implementation of a strategic marketing campaign for the Tennessee Small Business Development Center network Lead Center have been rejected. Reasons for the rejection are:

- the low number of proposals received;
- failure of the RFP to request proposals specifying a ceiling on the expense amounts to be added to the cost of contracted services; and,
- consideration that the RFP contained language that may have been construed as restrictive by potential proposers.

A new RFP will be issued in July 2001 to include a request for a maximum cost for expenses as well as other details. We encourage your response to the new RFP. You may include or omit any information already provided in the first proposal; however, the new proposal should stand alone without reference to the first.

Thank you for your interest in serving the Tennessee Board of Regents and the Tennessee Small Business Development Center.

According to Mr. Laabs, because the RFP was withdrawn, no review of the one proposal, which had been submitted by Jungle Marketing, occurred.

Chronology Related to the Final Request for Proposal (RFP)

Mr. Laabs stated that after Dr. Rudley directed that the implementation RFP be withdrawn, he revised the RFP, with the assistance of Dr. Rudley and Ms. Hall, to make it less restrictive. As with the initial implementation RFP, Mr. Laabs stated that he did not solicit, and he did not receive, any input from the Marketing Committee, and the Marketing Committee did not review the revised RFP before it was issued. The Marketing Committee members we interviewed—Mr. Frakes, Mr. Geho, Ms. Clark, and Mr. Latham—confirmed that they were not solicited for input, did not provide input, and did not review the revised RFP before it was mailed out.

Our comparison of the initial and the revised implementation RFP showed several amendments to make the revised RFP less restrictive. None of the changes had the effect of making the revised RFP equally restrictive or more restrictive than the initial RFP.

The revised RFP amended the section requiring a working knowledge of the Small Business Development System to make that section less restrictive. This is shown by two significant changes.

First, the initial RFP required that bid participants must demonstrate in their proposal tangible work experience and a “complete understanding” of the small business development centers system operations, especially in Tennessee. The initial RFP further required a “complete understanding” of the TSBDC mission, target markets, training programs, community outreach programs, and any legislative issues that could affect the marketing and strategic direction of the center. In contrast, the revised RFP dropped the requirement for a “complete understanding” of the small business development centers system operations, especially in Tennessee, requiring instead that bid participants must demonstrate only that they have “obtained an understanding” of the Tennessee Small Business Development Centers system operations. The revised RFP also dropped the requirement for a “complete understanding” of mission, target markets, programs, and legislative issues, requiring instead that bid participants demonstrate that they “understand” such aspects of the TSBDC environment.

The second significant change in this section related to the work experience requirement. The initial RFP required that the successful bidder should have worked with the SBDC system for at least five years, preferably on a national level. The revised RFP deleted the five-year experience requirement altogether and did not include any specific years-of-experience benchmark.

The revised RFP also amended the section requiring knowledge of the TSBDC marketing campaign to make it less restrictive. Both the initial and the revised RFPs stated that the TSBDC had recently developed a marketing campaign to increase the awareness of the organization to the citizens of Tennessee, both public and private civic organizations, and its stakeholders. Both further stated that each of the campaign strategies was intertwined. However, the initial RFP

stated that it was important that the proposers be “intimately knowledgeable” of the developed campaign, whereas the revised RFP stated only that it was important that the successful bidder “become knowledgeable” of the developed campaign.

The revised RFP further amended the section related to scoring the bids to make it less restrictive. Both the initial and the revised RFPs contained four criteria and associated scoring percentages. The most critical change pertained to the TSBDC marketing campaign. The initial RFP allocated 70% of the score to “Knowledge of TSBDC Marketing Campaign.” In contrast, the revised RFP allocated 60% of the score to an amended category called “Technical Proposal and Demonstrated Understanding of TSBDC Marketing Campaign and Proposed Methodology for Providing Requested Services.” The “Budget (Cost)” category remained the same with regard to both title and scoring percentage (20%) in both RFPs, but, like the category related to the marketing campaign, the remaining two categories were renamed and the scoring percentages were increased. “Working Knowledge of the Small Business Development System” was changed to “Demonstrated Understanding of the Small Business Development System” and the scoring was increased from 5% to 10%. Similarly, the category “Experience” was changed to “Related Experience,” and the scoring also was increased from 5% to 10%.

The overall effect of these changes was to make the revised RFP less restrictive and thus more competitive.

According to an e-mail from Ms. Hall to Mr. Laabs dated July 5, 2001, Dr. Rudley had reviewed the changes to the RFP and had agreed to them. Dr. Rudley confirmed that he had approved the revised implementation RFP.

After these revisions and other minor wording changes had been made, the revised RFP for implementation of the TSBDCN marketing plan was issued on July 6, 2001, with responses due 14 days later, on July 20, 2001.

As with the mailing of the earlier RFPs, TBR’s Business Office administered the copying and mailing of the RFPs to the identified vendors. Although Ms. Hall did not have specific recall related to this RFP, she said that to her knowledge, the RFP mailing followed the normal processes in that the RFP would be mailed on the date specified in the RFP, which was July 6, 2001.

According to Ms. Hall, the revised RFP was sent to the same vendors on the initial vendor list, with two exceptions. Because the RFPs previously sent to Matlock and Associates and Dye Van Mol & Lawrence had been returned for insufficient address, Ms. Hall excluded them from the mailing for the revised RFP.

Ms. Hall told us that after the two RFP packages for Matlock and Associates and Dye Van Mol & Lawrence were returned for insufficient addresses, she initiated efforts to obtain two more vendors. On July 6, 2001, Ms. Hall e-mailed Mr. Laabs asking, “Are there any vendors you want to add? We will need to find two more, since we received two back unopened last time.” Mr. Laabs did not provide any additional companies. In his e-mail response, also on July 6, 2001, he stated, “As for other vendors, I provided all the ones I knew from the other SBDC

programs across the country to Pat [Pat Couch, Assistant Director of Fiscal Services] for the first RFP for development.”

It would appear appropriate, when an RFP package is returned for insufficient address, that TBR staff would double check the address and also would call the company for the correct address. At that point, at the company’s request, the mailing could be expedited or the company could make other arrangements to obtain the RFP, such as coming to TBR’s Offices to pick up the RFP or having the RFP faxed to the company. In the case of Matlock and Associates, the return notification contained the new address for the company. In the case of Dye Van Mol & Lawrence, the reason for the return for insufficient address apparently was an incorrect zip code. Not following through on the returned packages resulted in the exclusion of two companies that had been on the previous vendor list.

TBR staff became aware of wrong addresses because the packages were returned. It seems reasonable to assume that if other packages had wrong addresses, they also would have been returned to the TBR offices.

Ms. Hall told us that two companies contacted her to obtain copies of the RFP. The two companies were *mydesign*, located in Nashville, Tennessee, and The Success Group, LLC, located in Hermitage, Tennessee. (See Exhibit 9 for revised vendor list.)

Based on a handwritten note from Ms. Donna Hacker, then the administrative assistant for the TSBDCN Lead Center, to Ms. Hall, a *mydesign* representative picked up a copy of the RFP on July 17, 2001. We could not determine how or when the RFP was transmitted to The Success Group because TBR staff did not maintain documentation of transmittal.

Both *mydesign* and The Success Group informed TBR staff that they would not be submitting bids.

In an e-mail to Mr. Laabs dated July 17, 2001, a *mydesign* representative stated,

I really appreciate your having this packet put together for me and giving me the opportunity to prepare a bid. The reality is when I started reading all the stipulations along with the deadline I realized it is too much for me to take on right now. So I will not be submitting a proposal for this project.

In a letter to Mr. Laabs, also dated July 17, 2001, the president of The Success Group, stated,

Thank you for the opportunity to submit a proposal to the Tennessee Board of Regents and the Tennessee Small Business Development Center Network Lead Center. However, my office received your request for a proposal (RFP# 2002-01) on July 17th, and due to the short time frame we will be unable to create a proposal that contains the amount of detail requested. I regret that my company will not be able to assist the TSBDC in this project, but I certainly look forward to working with you in the future.

It is evident from the chronology of events related to *mydesign* and The Success Group that both companies received their RFP packages on July 17, 2001. According to the RFP timeline, which was outlined in the RFP, responses were due on or before July 20, 2001. Thus, the two companies had approximately three days to respond to the RFP, a time period significantly less than the 14 days envisioned by TBR policy.

According to Ms. Modisher, TBR's General Counsel, since the vendor list contained the names and addresses of 13 companies, and since TBR's policy provided for the mailing of RFPs to 15 vendors or the number of vendors on the vendor list, whichever was less, sending the RFP to the 13 vendors 14 days before the bid opening date satisfied TBR's policy. Ms. Modisher said that the subsequent transmittal of RFPs to *mydesign* and The Success Group, even though they had only three days to respond, was consistent with TBR's practice of providing RFPs to other vendors, upon request, within the response period.

In addition to *mydesign* and The Success Group, which declined to bid, one RFP package was returned for insufficient address. That package, to Katcher Vaughn & Bailey, located in Brentwood, Tennessee, was postmarked July 5, 2001. Because TBR staff told us that all the RFPs were mailed at one time, the July 5 postmark date indicates that all of the RFP packages were mailed on July 5. When we asked Ms. Hall why the RFP package sent to Katcher Vaughn & Bailey was postmarked July 5 when the RFP mailing date was supposed to be July 6, she provided two possible explanations: either the packages were mailed on July 5 or they were run through the postage machine early on July 6 before the date on the machine had been changed.

Because TBR told us that the RFPs were mailed at one time, the July 5 date indicates that all of the RFPs were mailed at one time, either on July 5 or July 6, as indicated above, which would have been on or before the date specified in the RFP timeline.

Our review showed that the reason for the return was that the mailing label was incorrect. The correct address should have been "105 Westwood Place, Suite 250, Brentwood, TN, 37027." However, the incorrect address on the mailing label was "105 Brentwood Place, Ste 2350, Brentwood, TN, 37027." The RFP package was marked by the U.S. Postal Service "Returned to Sender. No Such Street." Since the address was correct on the mailing list, the incorrect label was evidently the result of a typing error. Since only one RFP package was returned for an incorrect mailing label that can be attributed to a typing error, it is evident that such errors occur but are not prevalent.

Of the 12 remaining vendors, two submitted bids: Jungle Marketing and Atkinson Public Relations, Inc., located in Nashville, Tennessee. The bid opening, which occurred on July 20, 2001, at 2:00 p.m., was documented by a completed "Bid Analysis & Information" form. According to that form, the bid opener was Mr. Laabs and the bid opening was witnessed by Ms. Hall in her role as a TBR representative. As noted above, Ms. Hall reported directly to the Vice Chancellor for Business and Finance, not to Mr. Laabs, who reported directly to the Vice Chancellor for Academic Affairs. No vendor representatives attended the bid opening and thus the "Bidders Attendance and Registration" form was not completed.

Evaluation of the Two Proposals

Although Marketing Committee members ultimately completed and documented their evaluation, they erred in failing to document their evaluation at the time Jungle Marketing was selected. Later, when the absence of evaluation forms was questioned by Ms. Hall, they filled out evaluation forms that reflected the criteria and scoring percentages. Clearly, evaluation forms should be completed contemporaneous with the evaluations, not subsequently.

As indicated by a memorandum from Mr. Frakes, Chairman of the Marketing Committee, to Mr. Laabs, dated August 2, 2001, the Marketing Committee reviewed and evaluated the proposals submitted by the two public relations firms interested in conducting the TSBDCN marketing campaign. According to Mr. Frakes' memorandum, the Marketing Committee recommended that Jungle Marketing be awarded the contract for the statewide marketing campaign for the following reasons:

1. Jungle Marketing, Inc. is very knowledgeable of the operations and networks of small business centers nationwide.
2. Jungle Marketing, Inc. has experience in conducting a statewide marketing campaign of the magnitude that would be incorporated by the TSBDC network. Their professional experience in conducting marketing campaigns is unparalleled in the area of supporting small business development centers.
3. Jungle Marketing, Inc. has been recognized by the Association of Small Business Development Centers as being on the "cutting edge" of developing, conducting and executing marketing plans of the caliber that will be used with the TSBDC network.
4. Jungle Marketing, Inc. has established a clear chain-of-command on "how to" execute the Tennessee Small Business Development Center plan. This will allow service center directors and counselors to meet the needs of their clients without worrying about the intricacies and overall management involved in conducting the campaign. The Atkinson proposal did not address the issue of the plan's execution.
5. Although cost was varied between the two proposals, Jungle Marketing's proposal allows the TSBDC the freedom to make decisions on cutting portions from the plan to meet budget expectations.
6. The Atkinson firm did not [emphasis in original] address the items requested by the RFP.

According to Mr. Laabs, based on the recommendation of the Marketing Committee, he prepared a draft contract and submitted it to TBR's Business Office on August 22, 2001. Mr. Laabs signed the draft contract and dated his signature August 22, 2001. Because the contract

was in process internally, it was not sent to Jungle Marketing for Mr. Smith's signature at that time.

In response to Mr. Laabs, by memorandum dated August 27, 2001, Ms. Hall enumerated five items that needed changes or clarifications before the contract could be processed further. Two items in particular related to the evaluation process and documentation, while the remaining three items pertained to the contract's maximum liability, term, and funding source. The two matters involving the evaluation process and appropriate documentation were the following:

- The letter providing the committee's recommendation does not include a scoring breakdown as stated in the RFP. Each committee member should prepare a scoring to be submitted along with a total scoring that shows by points how the contractor was selected.
- The committee's letter does not make it clear whether the Atkinson bid is considered non-responsive (#6), or whether it was scored along with the Jungle bid. If it is considered non-responsive, specific details will need to be provided.

Mr. Laabs told us that he was not aware that an evaluation form needed to be completed by each reviewer until he received Ms. Hall's memorandum. TBR policies and procedures did not explicitly require the completion of an evaluation instrument, and TBR Business Office staff did not direct Mr. Laabs or the Marketing Committee to complete such evaluations during the procurement process, until after the committee had met and selected Jungle Marketing. However, TBR's purchasing policy and procedures stated that invitations to bid shall specify "date bid evaluations available for viewing," and this language made evident that written bid evaluations should be prepared and made available for public inspection.

According to Mr. Laabs, he promptly communicated Ms. Hall's concerns to Mr. Frakes. On August 28, 2001, Mr. Frakes responded by sending an e-mail to the other Marketing Committee members that included a scoring sheet and that stated,

In order for us to justify accepting the Jungle Marketing, Inc. bid for our statewide marketing plan, we must, as a committee and as individuals, assess and score the two proposals. As you will recall, the two proposals that were accepted at the Lead Center were those put forth by Jungle Marketing, Inc. and Atkisson [sic] Public Relations firm.

When we met during the most recent director's meeting, we all agreed that Jungle Marketing was the best proposal according to all of the criteria listed on the scoring sheet. However, we must formalize the procedure by filling out the attached form.

I appreciate your diligence [sic] and assistance with the marketing effort. Please fill this form out and send to me via e-mail ASAP, so we can put this issue to bed and get on with our marketing plan.

In response to Mr. Frakes' e-mail, Ms. Clark, a Marketing Committee member, stated that she hadn't seen the Atkinson proposal. When we asked Ms. Clark about her comment, she told us that she had attended the Marketing Committee meeting during which the two proposals had been discussed and that she had based her decision on the comments made by other committee members. She said that after her e-mail response to Mr. Frakes, she received and reviewed the Atkinson proposal.

On August 30, 2001, Mr. Frakes transmitted the scoring sheets with a cover memorandum to Mr. Laabs. The scoring sheets had been completed by Mr. Frakes, Mr. Odom, Ms. Clark, and Mr. Geho. In his memorandum, Mr. Frakes stated,

Attached are the scored evaluation forms from the TSBDC Public Relations Committee [also the Marketing Committee] for the Request for Proposals (RFPs) submitted by Jungle Marketing, Inc. and Atkinson Public Relations.

These evaluations attest to the strengths and weaknesses of each of the two proposals. As you will see, the committee's scored evaluations confirm the overall strength and workability of the proposal submitted by Jungle Marketing, Inc.

As chairman of the committee, and facilitator of this review of proposals, I recommend the TSBDC follow the scored evaluations and recommendations of the committee to accept the Jungle Marketing, Inc. proposal.

We reviewed the four completed scoring sheets attached to Mr. Frakes' memorandum. The scoring sheet form contained the four criteria and the scoring percentages specified in the RFP. The committee members who completed the scoring form scored both Jungle Marketing and Atkinson on the criteria and applied the scoring percentages. Our review disclosed that the four committee members scored Jungle Marketing higher than Atkinson in every category. The fifth committee member, Mr. William Latham, did not participate in the scoring of the two proposals due to the press of other obligations. The individual scoring in favor of Jungle Marketing was 80 to 39; 84 to 57; 89 to 41; and 82 to 47. The overall score in favor of Jungle Marketing was 335 to 184. (See Exhibit 10.)

One committee member, who had completed an evaluation form, identified a problem in evaluating the proposal submitted by Atkinson. Ms. Clark noted on her scoring sheet, "Difficult to evaluate budget of Atkinson Proposal because costs were not included for the collateral materials." Later, on September 17, 2001, Ms. Hall e-mailed Mr. Laabs to obtain an explanation regarding the cost weightings on the scoring sheets. On September 18, Mr. Laabs provided by e-mail the following explanation:

According to the Atkinson proposal page 16, item #2, their proposal "does not include any collateral, audio/visual, interactive, or other design/production costs." They offer only to assist the Tennessee Small Business Center to review and identify vendors. This statement is substantiated throughout their proposal with similar statements. In other words, the cost of production of the hard deliverables

as outlined in the marketing campaign sent to all bidders has not be [sic] included in their proposal. The committee, therefore, realized that production costs would be incurred above the quoted price of the Atkinson proposal. Each committee [member] then made their assumptions as to what additional costs would be realized.

Comparison of Line Item Budgets for Jungle Marketing and Atkinson Public Relations

Both Jungle Marketing and Atkinson submitted line item budgets as part of their proposals. For Jungle Marketing, its line item budget included three categories: production, travel and lodging, and management fees, totaling \$181,555. The largest budget category was production at \$130,555.

In comparison, Atkinson also included three categories in its line item budget: professional fees, administrative fee (5%), and out-of-pocket costs, totaling \$120,536. The largest budget category was professional fees at \$108,510, based on 1,146 proposed hours to be provided.

Overall, Jungle Marketing proposed a management fee of \$48,000, while Atkinson proposed a professional fee of \$108,510. These fees were apparently for the same basic services. Further, Jungle Marketing included production costs for various deliverables of \$130,555, but Atkinson did not include production costs.

In its “Cost Summary” section of its bids, Atkinson defined and explained its cost categories, documentation, and billing methodology. In that section, Atkinson stated,

This proposal does not include any collateral, audio/visual, interactive, or other design/production costs. Atkinson can help the Tennessee Small Business Development Center review and identify vendors to assist with these projects.

However, it should be noted that the RFP specifically required each bidder to include a budget identifying the total cost of the services proposed. Jungle Marketing, in contrast, included budget costs for each deliverable itemized in its proposal.

Contract Award

Although Jungle Marketing’s response to the implementation RFP included a proposed budget of \$181,555, the budget and the scope of services were substantially revised through discussions among Mr. Laabs, Mr. Ridley, then the TSBDCN Associate Director, and Mr. Sidney McPhee, then the Vice Chancellor of Academic Affairs, and Mr. Smith after Jungle Marketing had been selected to implement the marketing plan, which it had developed.

In addition, the matter also was addressed by the TSBDCN Marketing Committee, as reflected in its minutes dated November 7, 2001. According to the minutes, because of “state budget issues affecting contracts through the TBR office,” the committee recommended some reductions in the original marketing plan proposed by Jungle Marketing. The revisions included

cutting the number of deliverables from 11 to 6 and reducing the total cost from \$180,555 to \$105,455. The committee recommended reducing Jungle Marketing's management fee from \$48,000 to \$28,000, while leaving the travel and lodging expense the same at \$3,000.

In a memorandum dated November 14, 2001, Mr. Laabs transmitted the draft contract to TBR's Business Office and noted that the scope of services had been narrowed "to only what we want." In addition, the overall contract amount had been cut in half, from \$181,555 to \$90,255. In comparing Jungle Marketing's proposal with the final contract, management fees were reduced from \$48,000 to \$28,000; travel and lodging remained the same at \$3,000; and production costs of the specified deliverables were reduced from \$130,555 to \$59,255. According to Ms. Hall, she felt that such negotiated reduction in contract amount and scope of services was allowable because while the scope was narrowed, the cost per selected service remained the same, and thus, the work did not need to be rebid.

The term of the contract between TBR and Jungle Marketing was November 10, 2001, through December 31, 2002. The contract was not extended. The contract also stated, "In no event shall the TBR's liability including travel reimbursement to the Contractor under this Contract exceed \$90,255.00." There were no subsequent amendments, and thus the "not to exceed" amount was not increased. The contract was signed and dated by the following individuals: Mr. Laabs on November 9, 2001; Dr. Ellen Weed, then TBR's Vice Chancellor for Academic Affairs, for Chancellor Manning, on November 21, 2001; and Mr. Smith on November 30, 2001.

Unlike their treatment of the award of the development contract, TBR staff did not send a "Notice of Intent to Award" to the vendors. The "Notice of Intent to Award" letter is important because its date establishes the beginning of a time frame for official protests.

No vendor filed a formal written protest regarding the RFP or the contract award. Also, no vendor submitted an informal complaint on the RFP or the contract award.

Contract Performance

The "Scope of Services" section of the contract included specific deliverables, as follows:

1. Produce brochures and door stickers.
2. Design Success Binders.
3. Design and publish a new TSBDC website.
4. Conduct two-day customer service training program.

Jungle Marketing submitted a \$16,450 invoice for brochures and an \$8,327 invoice for stickers. However, we could not determine the quantity shipped or received because the invoices did not record the quantities shipped and Lead Center staff did not retain shipping documentation that showed the quantity of brochures and stickers received. Mr. Laabs told us that he believed that the Lead Center received all the brochures and stickers due pursuant to the contract and bid proposal because he recalled receiving "several heavy boxes," although he could not confirm the number. He provided us with a copy of the brochure and the peel-off door/window sticker. In

addition, the Center's account manager provided shipping documentation that she had obtained from a box of the brochures that remained in the office, although that documentation did not record the quantity shipped. According to Mr. Laabs and other TSBDC directors we interviewed, most of the brochures and peel-off stickers were distributed to the TSBDC sites, while some were retained at the Lead Center.

Mr. Smith stated that he thought the required quantity of brochures and stickers had been sent to the Lead Center by the printing company that Jungle Marketing used. After reviewing his records at our request, Mr. Smith told us that he had not retained any information that showed the quantities shipped.

According to information provided by TBR staff, the Lead Center should have received 5,000 brochures at a cost of \$16,450 (\$3.29 each) and 15,000 door/window stickers at a cost of \$8,327 (\$0.56 each). (See Exhibits 11 and 12.)

Jungle Marketing submitted a binder cover and spine design for \$943 (see Exhibit 13), and the company also developed the TSBDCN website for \$8,000.

Mr. Smith conducted a two-day customer service training seminar on February 13-14, 2002, at TBR's Central Office in Nashville, Tennessee. Lead Center staff did not maintain documentation related to the content of, or the participation in, the two-day seminar. In response to our inquiries, Mr. Smith provided us the PowerPoint presentation that he said he used at the training, and Mr. Frakes, the Marketing Committee Chairman, provided us a 27-page manual entitled *Customer Service Guidelines*, which he said he received from Jungle Marketing sometime after the training. Mr. Smith's PowerPoint presentation addressed the following topics:

1. Change dynamics.
2. Customer service teams.
3. Communication styles.
4. Customer service vision.
5. Internal customers vs. external customers.
6. Telephone service.
7. Service philosophy.

The manual provided to Mr. Frakes covered the following areas:

1. Telephone answering.
2. How a customer is received at each center.
3. How information is delivered.
4. How customer follow-up is managed.
5. How to handle an angry customer.
6. How to manage internal customers.

Mr. Smith recalled that the participants included the TSBDCN Directors and their front-line staff. He said that the program included his presentations and small group discussions.

Several seminar participants told us that the seminar occurred. Pursuant to the contract, Jungle Marketing billed TBR \$18,000 for the two-day customer service training program, plus \$580.06 in travel expenses. An additional \$158.56 in hotel expenses was direct billed to TBR's Central Office. Overall, the two-day training program cost \$18,738.62.

In addition to the expenses enumerated above, Jungle Marketing billed TBR \$28,000 for its management fee. According to Mr. Smith, the management fee included arranging the services of local contractors to complete the processing and delivery of the finished products as outlined in the contract. Jungle Marketing's total expenses under the contract amount to \$80,458.62.

Invoices and Payments

Jungle Marketing submitted eight invoices totaling \$80,300.06 for expenses incurred during the period November 10, 2001 through December 31, 2002. An additional \$158.56 in hotel expenses was billed directly to TBR's Central Office. As noted above, the eight invoices plus the direct billed hotel expenses totaled \$80,458.62. TBR paid \$80,480.73 under the contract, which reflected several upward adjustments for meal allowances. Such adjustments were made because Jungle Marketing had submitted actual meal expenses, which totaled less than the state per diem.

Unlike its expenses for developing the TSBDCN marketing plan, which exceeded the contract amount, Jungle Marketing spent \$9,774.27 (11%) less than the contract limit of \$90,255.00. Jungle Marketing's invoice dates and amounts, and the direct billed hotel expenses, as well as TBR's payment dates and amounts, are shown in Exhibit 14.

Cost/Benefit Considerations

We asked Mr. Laabs and the Marketing Committee members for their assessment of the cost/benefit of the services and goods provided by Jungle Marketing. The committee members included Mr. Frakes, the chairperson, Mr. Geho, Mr. Latham, Ms. Clark, and Ms. Swift.

Mr. Laabs stated that Jungle Marketing's performance relative to the first contract for developing the TSBDCN marketing plan met his expectations. With regard to cost, he explained that since he had never worked on a marketing project before, at the time he did not have a basis to determine whether the costs were reasonable or not. However, he said that in hindsight, in his opinion, the costs were reasonable considering the deliverables (the two-day brainstorming session and the Genimation Report) provided by Jungle Marketing.

With reference to the second contract with Jungle Marketing to implement the TSBDCN marketing plan, Mr. Laabs stated that he considered the contract performance and the deliverables provided by Jungle Marketing very worthwhile. Mr. Laabs stated that he was satisfied with the goods and services provided by Jungle Marketing with the exception of the first day of customer service training, which he described as so basic that TSBDCN staff could have provided it themselves. He said that he spoke to Mr. Smith about the inadequacies in the training and that Mr. Smith compensated for the deficiencies on the second day of training.

Mr. Frakes, the Marketing Committee Chairperson, stated that although he did not attend the brainstorming session because he was in the hospital, he heard from other attendees that they were very impressed with Jungle Marketing's presentation. He said that Jungle Marketing's Genimation Report met his expectations. He stated that the contract was worth the cost, although he regarded the total cost as "steep." However, he acknowledged that he did not question or raise any objection related to cost. With respect to the second contract, Mr. Frakes stated that the customer service training, which he attended, failed to meet his expectations; the stickers were too expensive; and the binder cover should have been incorporated into the management fee. Mr. Frakes said that the quality and cost of the brochures were appropriate, and that he was satisfied with the website, when it was completed. In addition, Mr. Frakes stated that he would have liked to have seen the management fee cut in half from \$28,000 to \$14,000. Mr. Frakes said that he did not formally communicate his concerns, but he did discuss them informally with other Marketing Committee members.

Mr. Geho stated that he thought that the cost was reasonable for the first contract. Mr. Geho said that he attended the brainstorming session and that he was satisfied with Jungle Marketing's performance at the session and its final report. With reference to the second contract, Mr. Geho said that he only attended a small portion of the customer service training and therefore had no opinion about its adequacy. However, Mr. Geho stated that he thought the stickers were a waste of money and ill-conceived because businesses, in his experience, would not clutter their doors and windows with stickers. Mr. Geho said that he did not see the binder cover and thus had no opinion about it. Mr. Geho said that he thought the cost of the brochures was reasonable because he recognized that development costs are high on the front end but over time, as more brochures are printed, the cost per unit would be less. Mr. Geho also stated that he thought the website met expectations, although there were problems in that the website took longer than expected to complete because he felt that other TSBDCN Directors micromanaged the site development to some extent. As with Mr. Frakes, Mr. Geho did not formally communicate his concerns. He also said that he did not discuss his concerns informally with the other Marketing Committee members.

Mr. Latham stated that he was not involved with the first contract because he was busy with Tennessee State University and SBDC matters. He said that he attended the brainstorming session and rated it a decent workshop. He said that he did not know the contract cost at the time. When we informed him of the total contract cost, he stated that the cost was probably too high in relationship to Jungle Marketing's deliverables. With regard to the second contract, Mr. Latham said that he attended the customer service training but did not remember it well enough to comment. As with the first contract, Mr. Latham stated that he did not track costs. When we informed him of the cost for specific deliverables, he stated that, in his opinion, the cost of the stickers, the brochures, and the binder cover seemed high. He said that he did not know enough about web design to comment on the quality and cost of the website. Mr. Latham said that he did not question the costs at the time because he was a member of the Marketing Committee in name only, and that he was involved with other TSBDCN committees.

Ms. Clark stated that she did not attend the brainstorming session or read the Genimation report because she did not become involved with the Marketing Committee until July 2001. She said that she had no basis for comparison to comment on the costs relative to the first contract.

With respect to the second contract, Ms. Clark stated that she attended the customer service training, and that the first day was not what she expected, but Jungle Marketing regrouped, and the second day was more productive and beneficial. She commented that she had no basis for comparison regarding training costs, but overall the costs seemed reasonable to her. Ms. Clark stated that in her opinion the cost of the stickers, brochures, and website were reasonable. She said that she didn't recall the binder cover, and therefore did not have an opinion about its cost.

Although Ms. Swift was listed as a member of the 2001 Marketing Committee, she stated that she did not have any involvement with the committee because she was totally absorbed with fund-raising related to her SBDC. Ms. Swift said that she did not have any involvement with the first contract. Ms. Swift left the TSBDCN and accepted employment with the City of Clarksville in April 2001, and therefore was not involved with the second contract. Because she was not involved with the RFPs or the contracts, we did not question her about costs.

With regard to cost, although the value of services is subjective, it appears that based on e-mail correspondence and the statements of Lead Center staff and Marketing Committee members during our interviews, the development of the various deliverables did involve substantial effort on the part of Jungle Marketing.

TBR management, MTSU management, TSBDC Directors, and Lead Center staff should carefully scrutinize future requests for the procurement of goods and services to determine whether such goods and services are needed, and if needed, are obtained with acceptable quality at a reasonable cost. They also should determine whether such goods and services could be provided by state employees and through the use of state resources with acceptable quality at a lower cost than outside vendors.

TBR's Purchasing Policy Needs to Be Updated

Tennessee Code Annotated, Title 12, Chapter 3 pertains to public purchases of materials, supplies, and equipment. Section 12-3-103 exempts the TBR system (as well as the General Assembly and the University of Tennessee) from the provisions of Chapter 3 but provides that the purchases by and for the TBR system are subject to the policies of the Board of Standards. Thus, TBR's purchasing policy must be submitted to the Board of Standards for review and approval. Further, *Tennessee Code Annotated*, Title 12, Chapter 4 pertains to public purchases of personal, professional, and consultant services. Section 12-4-109 requires that such services must be procured in the manner prescribed by regulations promulgated by the Commissioner of the Department of Finance and Administration in consultation with the Commissioners of Personnel and General Services and with the approval of the State Attorney General and the Comptroller of the Treasury. Pursuant to Section 12-4-109, the Department of Finance and Administration (F&A) has promulgated such rules, which include Chapter 0620-3-3 and 0620-3-8.

Rule 0620-3-3-.01, "Applicability," provides that the University of Tennessee and the Tennessee Board of Regents college and university systems shall have the option of following the F&A rules and the policy and procedures specified therein, or developing their own service contracting procedures, provided that such procedures are in compliance with the policy

expressed in the rules. Our limited review disclosed that two specific requirements, established by state statute and embodied in F&A's rules, have not been incorporated into TBR's purchasing policy. Section 12-4-109 requires that vendors submit separate sealed technical and cost proposals in response to RFPs and that the procuring agency develop a contract monitoring plan.

Because TBR's purchasing policy includes the materials, supplies, and equipment component as well as the personal, professional, and consultant services component, any revisions to that policy require the review and approval of the Board of Standards. TBR management should review current state statutes, rules and regulations, policy statements, and other guidance (such as information provided by F&A's Office of Contract Review, www.state.tn.us/finance/rds/ocr/home.html) to determine the aspects of TBR's purchasing policy that should be updated. In accordance with Section 12-3-103, such revisions should be forwarded to the Board of Standards for review and approval.

THE CONDO OFFER

Mr. Smith's E-mail Offer, November 7, 2002

According to the terms stated in the implementation contract (the second contract), the contract expired December 31, 2002. About two months prior to the expiration of the contract, Mr. Smith offered Mr. Laabs the free use of a condo at a ski resort in Colorado.

The evidence for Mr. Smith's offer is an e-mail from Mr. Smith to Mr. Laabs dated November 7, 2002 (see Exhibit 15). In his e-mail, Mr. Smith included the following offer:

I have a 2 bedroom condo now available at The Charter Resort at Beaver Creek that is available FREE the 3rd week of January. Would you like to go skiing. [sic] If you would let me know and I will call up my friend Steve and see if he still has it. He told me about this yesterday and I was going to bring it up after our conference call today as a surprise but we never talked. Let me know. Beaver Creek is an awesome ski areas [sic]. These condos usually rent for \$600 a night. Anyway, I cannot use it then as I will be in New York and thought you may like it since you enjoy skiing. I can get you local lift tickets for about \$50.00 a day. They are \$66.00 regular price.

Statements by Mr. Laabs and Mr. Smith

Mr. Laabs stated that he had not solicited Mr. Smith for the use of the Colorado condo. Mr. Laabs stated that Mr. Smith's offer was unexpected and that he considered Mr. Smith's offer inappropriate. Mr. Laabs told us that he recalled that he called Mr. Smith within a week of receiving the e-mail and told Mr. Smith that his offer was inappropriate and could not be accepted. Mr. Laabs stated that he did not communicate with Mr. Smith by e-mail about his offer. Mr. Laabs further stated that he had never solicited Mr. Smith for any items or services that constituted a personal benefit to him; that Mr. Smith had never offered any items or services

of personal benefit, except for the Colorado condo; and that Mr. Smith had not provided any items or services of personal benefit to him.

Mr. Smith confirmed that he had sent the e-mail offer of the use of the condo to Mr. Laabs and that Mr. Laabs called him to tell him that his offer was inappropriate and could not be accepted. Mr. Smith stated that Mr. Laabs had not solicited any items or services that constituted a personal benefit to him. Mr. Smith further stated that, except for his offer of the use of the Colorado condo, he had not offered any other items or services of personal benefit to Mr. Laabs. Mr. Smith stated that he had not provided any items or services of personal benefit to Mr. Laabs. When questioned specifically about the Colorado condo, Mr. Smith stated that Mr. Laabs did not accept his offer and did not use the condo.

With regard to the Colorado condo, Mr. Smith stated that the condo did not belong to him but to a friend of his, who was the hotel banquet manager at the time. Mr. Smith stated that he could not recall the man's last name but that his first name was "Steve." Mr. Smith stated that Steve had offered him the use of a condo unit at the hotel because he brought a lot of business to the hotel, such as the booking of seminar/conference rooms. Mr. Smith said that he recalled that Mr. Laabs had mentioned that he and his son liked to ski. Mr. Smith stated that since he knew that he would not be able to use the condo because he had a trip planned to New York during that time, he decided to offer the use of the condo to Mr. Laabs. Mr. Smith denied that his offer of the Colorado condo was a quid pro quo for receiving the TBR contracts.

Both Mr. Laabs and Mr. Smith stated that Mr. Laabs did not use the Colorado condo.

Examination of Time and Attendance Records, Cell Phone Records, and Credit Card Statements

We examined Mr. Laabs' calendar for January 2003. Except for the holidays on January 1st and 20th, three days of sick leave for the period January 6th – 8th, and one day of annual leave on January 27th, Mr. Laabs' calendar showed that he was at work in Tennessee during the month. We confirmed Mr. Laabs' holidays and leave with TBR's official time and attendance records. Mr. Laabs' time and attendance records reconciled exactly with his calendar and did not show any other leave for January 2003.

We also examined the cell phone billing records for Mr. Laabs' TBR-provided cell phone. Mr. Laabs told us that his cell phone was in his possession and that he only infrequently allowed other individuals to make an occasional work-related phone call. He said that his cell phone had never been in the possession of another individual for an extended period of time, such as several hours or several days. The billing records showed cell phone calls during January and that the calls originated in Tennessee. No calls originated in Colorado. In particular, for the third full week in January, which included a Monday holiday, the cell phone records showed phone calls originating in Tennessee for the work days Tuesday through Friday, indicating that Mr. Laabs was in Tennessee, not Colorado.

Because credit card records would show purchases made (airline tickets, hotel expenses, meal charges, and other items), we asked Mr. Laabs to provide us his credit card statements for January 2003. Mr. Laabs located the credit card statements for the credit cards that he used

during that period, and he provided copies to us. We reviewed his charges to determine the locations of his purchases. Our review of Mr. Laabs' credit card statements disclosed no charges for any expenses incurred in Colorado in January 2003.

Interviews with Officials of The Resort Company

Ms. Maria Porter, the Director of Staff Operations/Risk Management for The Resort Company, the company that manages The Charter at Beaver Creek (referred to by Mr. Smith as The Charter Resort at Beaver Creek), reviewed the hotel's reservation records and stated that Mr. Laabs had not been registered as a guest at any of the condos managed by the hotel for the period September 2000 through February 2005. Ms. Porter stated that the reservation records showed only one room reservation for Mr. Smith, in September 2000. Ms. Porter also stated that none of the units were involved in timeshare arrangements. Ms. Laurie Jeanes, the Controller for The Resort Company, provided further information that neither Mr. Smith nor his company, Jungle Marketing, ever owned any of the condo units managed by the hotel.

RECOMMENDATIONS

Our review resulted in the following 12 recommendations:

1. TBR's purchasing policy requires that an RFP be sent to the vendors on the vendor list at least 14 days before the bid opening date. However, TBR staff did not document the mailing of the RFPs, either by a log entry, a transmittal letter, or any other form of documentation. TBR's policy should be revised to require appropriate documentation that shows when RFPs are mailed to vendors and that RFPs are mailed to all vendors on the vendor list.
2. TBR's purchasing policy does not address documenting when proposals are received. TBR's policy should be revised to require appropriate documentation (date, time, and signature) of when proposals are received.
3. The RFPs directed vendors to submit their proposals to the TSBDCN State Director. To remove the ability of the State Director, or other Lead Center staff, to attempt to improperly influence the procurement process, proposals should be submitted to staff that are independent of the parties seeking to contract.
4. TBR's purchasing policy does not explicitly address documenting the evaluation process for proposals, nor does TBR's policy address the number or composition of the evaluation team. TBR policy should be revised to require appropriate documentation related to the evaluation of proposals and the reviewers' recommendation. In particular, TBR's policy should require documentation that the evaluation was in compliance with the criteria and ranking percentages specified in the RFP. TBR's policy also should provide specific directives regarding the number and composition of the evaluation team.
5. TBR's purchasing policy does not establish a defined process for reviewing and approving RFPs issued under TBR's authority with a specific focus, as part of that process, to establish that the RFPs were appropriately competitive. TBR's policy should be revised to include appropriate procedures and documentation related to internal review of RFPs to enable the potentially restrictive nature of RFPs to be detected and corrected prior to issuance. In addition, TBR management should consider the utilization of a pre-proposal conference as part of the RFP procurement process to provide vendors the opportunity to formally express concerns, issues, and complaints and to have those matters resolved prior to their submission of proposals.
6. TBR's purchasing policy does not address sending a "Notice of Intent to Award" to all other vendors on the vendor list once a decision has been made to award the contract to the winning bidder. Such notification would signify closure of the RFP and bid award process and would provide a specific time frame for protests. TBR's

policy should be revised to include a requirement that a “Notice of Intent to Award” be sent to all losing vendors on the vendor list at the conclusion of the selection process and to require appropriate documentation of those mailings.

7. Although TBR’s purchasing policy addresses documenting formal written protests, it does not address documenting informal unwritten vendor complaints about RFPs or contracts. TBR management should consider revising TBR’s policy to include appropriate procedures and documentation related to informal vendor complaints and their resolution. Alternatively, TBR management should consider requiring that all complaints be regarded as formal protests and be appropriately documented.
8. TBR’s internal controls were insufficient to prevent overpayment of \$1,048.21 to Jungle Marketing for the development contract. TBR’s Business Office staff should strengthen internal controls to ensure that vendor payments do not exceed the authorized contract amount. In particular, staff should verify that total charges remain within the contract limit and that contract-related charges that are direct billed to TBR are appropriately accounted for and allocated to the correct cost categories.
9. The Lead Center’s internal controls were not adequate to ensure that Lead Center staff maintained appropriate documentation related to contract performance. Lead Center staff did not maintain documentation that recorded the quantity of brochures and peel-off window/door stickers shipped and received. Neither the invoices nor the shipping documentation for the brochures and stickers contained the quantity shipped; and most of the shipping documentation was not retained. TBR’s Business Office staff should enhance internal controls to ensure that appropriate documentation of contract performance of specific deliverables is provided and maintained.
10. If deliverables include services that can be evaluated (such as training seminars and brainstorming sessions), evaluations should be required, and, when submitted, should be retained.
11. TBR management, Middle Tennessee State University management, TSBDCN Directors, and Lead Center staff should carefully examine the purpose of goods and services considered in contracts and determine whether such goods and services are needed, and if needed, are obtained with acceptable quality at a reasonable cost. They also should determine whether such goods and services could be provided by state employees and through the use of state resources with acceptable quality at a lower cost than outside vendors.
12. TBR’s purchasing policy has not been revised to incorporate current requirements embodied in state laws and rules and regulations. TBR’s purchasing policy is required to be submitted to the Board of Standards for review and approval by Section 12-3-103, *Tennessee Code Annotated*. TBR management should review current state statutes, rules and regulations, policy statements, and other guidance (such as information provided by the Office of Contract Review with the Department of Finance and Administration) to determine aspects of TBR’s purchasing policy that

should be updated. Such revisions should be forwarded to the Board of Standards for review and approval.

EXHIBIT 1

Timeline Regarding RFPs and Contracts

<u>Date</u>	<u>Summary</u>
October 2000	State Marketing Committee met
<u>FIRST RFP</u>	
December 8, 2000	RFP# 2001-04 for development of marketing plan issued. Deanna Hall referred Albert Laabs to sample RFP.
December 22, 2000	Bid opening. Bids received from the following vendors: Tom Jackson and Associates (not responsive). SteadyRain (received late and disqualified, also unresponsive). Jungle Marketing, Inc. (won bid).
January 9, 2001	Notice of Intent to award to Jungle Marketing mailed to vendors.
February 21, 2001	Contract No. 1187-09-01-01 TBR/Jungle Marketing executed.
February 21-22, 2001	Jungle Marketing brainstorming session.
March 22, 2001	Jungle Marketing presents marketing plan to the Quarterly meeting of TSBDC Directors.
April 17, 2001	Jungle Marketing presents TSBDC Genimation Report to TSBDC Lead Center and other TBR staff.
<u>SOLE-SOURCE</u>	
May 24, 2001	Albert Laabs to Sidney McPhee/Manning with proposed contract amendment. Requests Jungle Marketing be awarded marketing implementation contract as sole-source with maximum liability of \$225,000.
May 30, 2001	Albert Laabs to Charles Manning – Request to amend contract with Jungle Marketing from 5/31/01 expiration date to 7/1/01 expiration date (no additional cost).
May 31, 2001	Jungle Marketing contract amendment to 7/1/01 expiration date approved.
June 1, 2001	Deanna Hall to John Rudley re: Albert Laabs' sole-source request (not unique). John Rudley states that another RFP is required.
Source: TBR chronology, RFPs, contracts, and internal correspondence.	

EXHIBIT 1 (CONTINUED)

Timeline Regarding RFPs and Contracts

SECOND RFP

June 11, 2001	RFP #2001-11 for implementation of marketing plan issued.
June 25, 2001	Bid opening. Jungle Marketing submitted the only bid.
No Date	Informal complaint by Tom Jackson and Associates.
Not Date	Note from John Rudley to Deanna Hall directing that the RFP be withdrawn and redone.
July 2, 2001	Notice of Rejection of Proposals and Intent to Issue a New RFP sent to vendors.
	Deanna Hall, Christine Modisher, John Rudley, and Albert Laabs work together to rewrite the implementation RFP to make it more competitive.

THIRD RFP

July 6, 2001	RFP# 2002-01 for implementation of marketing plan issued.
July 17, 2001	TBR provided <i>mydesign</i> the RFP.
	TBR provided The Success Group the RFP.
July 20, 2001	Bid opening. Bids received from Jungle Marketing and Atkinson Public Relations.
August 2, 2001	Jamie Frakes, Chair of TSBDC State Marketing Committee, to Albert Laabs, recommends Jungle Marketing.
August 27, 2001	Deanna Hall to Albert Laabs with list of problems related to evaluation process and draft contract.

EVALUATION OF RFP

August 28, 2001	Jamie Frakes to TSBDC Marketing Committee (e-mail) stating that the evaluation procedure needed to be formalized and documented.
	Carol Clark to Jamie Frakes (e-mail) requesting a copy of the Atkinson Public Relations proposal.

Source: TBR chronology, RFPs, contracts, and internal correspondence.

EXHIBIT 1 (CONTINUED)

Timeline Regarding RFPs and Contracts

NARROWED SCOPE

November 7, 2001	TSBDC Marketing Committee minutes. Due to budget issues and difficulty getting Jungle Marketing contract approved, the committee recommends reduction in contract cost by reduction in management fee and number of products.
November 30, 2001	Contract No. 3148-09-00-01 TBR/Jungle Marketing executed.

Source: TBR chronology, RFPs, contracts, and internal correspondence.

EXHIBIT 2

Tennessee Small Business Development Center Network

West Tennessee

Dyersburg State Community College
Dyersburg, Tennessee

Jackson State Community College
Jackson, Tennessee

University of Memphis
Memphis, Tennessee

Memphis Renaissance Center
Satellite Office of University of
Memphis
Memphis, Tennessee

Middle Tennessee

Austin Peay State University
Clarksville, Tennessee

Middle Tennessee State University
Murfreesboro, Tennessee

Maury County Alliance/Satellite Office
of MTSU
Columbia, Tennessee

Lebanon/Wilson County Chamber of
Commerce/Satellite Office of MTSU
Lebanon, Tennessee

Tennessee State University
College of Business
Nashville, Tennessee

Business Information Center
Tennessee State University
Nashville, Tennessee

Tennessee Technological University
College of Business Administration
Cookeville, Tennessee

Four Lakes Regional Development
Authority/
Satellite Office of TTU
Hartsville, Tennessee

Source: Tennessee Small Business Development Center Brochure.

East Tennessee

East Tennessee State University College
of Business
Johnson City, Tennessee

ETSU College of Business/
Satellite Office of ETSU
Kingsport, Tennessee

Chattanooga State Technical
Community College
Chattanooga, Tennessee

Cleveland State Community College
Cleveland, Tennessee

Pellissippi State Technical Community
College/Knoxville Area Chamber
Partnership
Knoxville, Tennessee

Technology 2020 Office/Affiliate Office
of PSTCC
Oak Ridge, Tennessee

Blount County Chamber/Satellite Office
of PSTCC
Maryville, Tennessee

TSBDC International Trade Centers

ITC for West Tennessee
Memphis, Tennessee

ITC for Middle Tennessee
Commerce Center Building
Nashville, Tennessee

ITC for East Tennessee
Knoxville, Tennessee

EXHIBIT 3
Employees of TSBDC in 2000

Mr. Albert Laabs

January 1, 2000 – March 15, 2000, Interim State Director for TSBDC
April 3, 2000, hired as State Executive Director

Mr. William Keith Ridley

April 3, 2000, hired as TSBDC Associate State Director

Ms. Wei Chow

October 30, 2000, hired as Financial Accounting and Reports Manager

Ms. Nancy Straley

March 13, 2000, hired as MIS Manager/Network Administrator

Ms. Vicki Hood

May 1, 2000, hired as Executive Secretary

Ms. Donna Hacker

March 14, 2000, hired as Administrative Assistant 1

Source: Information obtained from Tennessee Board of Regents.

EXHIBIT 4
Vendor List
First RFP, 2000

- | | |
|---|---|
| <p>(1) SteadyRain, Inc
1050 N. Lindbergh Blvd
St. Louis, MO 63132</p> <p>(2) MarketShare
7275 Glen Forest Dr.
Suite 203
Richmond, VA 23226</p> <p>(3) Conkling, Fiskum & McCormick
707 13th Street SE
Suite 116
Salem, OR 97301</p> <p>(4) Jungle Marketing, Inc.
2500 N. Circle Drive
Suite 300
Colorado Springs, CO 80909</p> <p>(5) The Hay Group
5901 Peachtree Dunwoody
Building B, Ste 525
Atlanta, GA 30328</p> <p>(6) Tom Jackson & Associates
Freedom Center, Suite 201
223 Eighth Avenue North
Nashville, TN 37203</p> <p>(7) Atkinson Public Relations, Inc.
2100 West End Avenue
Nashville, TN 37203</p> <p>(8) Dye Van Mol & Lawrence
209 7th Avenue North
Nashville, TN 37203</p> <p>(9) McNeely Pigott & Fox
The Tower, Suite 2800
611 Commerce Street
Nashville, TN 37203</p> <p>(10) The Ingram Group
231 Third Avenue North
Nashville, TN 37201</p> | <p>(11) Katcher Vaught & Bailey
Communications
105 Westwood Place, Suite 250
Brentwood, TN 37027</p> <p>(12) Duffey Communications, Inc
3379 Peachtree Road, NE Seventh Floor
Atlanta, GA 30326</p> <p>(13) Lovell Communications, Inc.
2021 Richard Jones Road
Suite 310
Nashville, TN 37215</p> <p>(14) Matlock & Associates, Inc.
One Midtown Plaza, Suite 220
1360 Peachtree Street NE
Atlanta, GA 30309</p> <p>(15) The Strategy Group
1024 18th Avenue South
Nashville, TN 37203</p> |
|---|---|

Source: Tennessee Board of Regents, Jungle Marketing Contract Files.

Federal Express

PRIORITY OVERNIGHT FRI
FedEx
TN# 8241 7306 4899
37217 -TN-US
XB BNAA
Barcode
Deliver By: 22DEC00 A1

Align top of FedEx PowerShip Label or ASTRA Label Here

Arrived in office 12/22/00
12:05 pm

The World On Time

84
100
FedEx USA Airbill 824173064899
1 FROM: SENDER'S ADDRESS
Date 12/21 FedEx Tracking Number 824173064899
Sender's Name Chris Kirsch Phone 314 432-6001
Company BROWN SMITH WALLACE LLC Steady Rain, Inc.
Address 1050 N LINDBERGH BLVD
City SAINT LOUIS State MO Zip 63132
2 Your Internal Billing Reference
3 TO: RECIPIENT'S ADDRESS
Recipient's Name Albert Laabs
Company Tennessee Small Business Development Center
Address 1415 Jefferson Ave. Ste. 300
City Nashville State TN Zip 37217
Barcode 8241 7306 4899

0215
4a Express Packaging Services
☒ FedEx Priority Overnight
☐ FedEx Standard Overnight
☐ FedEx 2Day
☐ FedEx Express Saver
4b Express Freight Services
☐ FedEx 1Day Freight
☐ FedEx 2Day Freight
☐ FedEx 3Day Freight
5 Prepacking
☐ FedEx Envelope/Label
☐ FedEx Pad
6 Special Handling
☐ SATURDAY Delivery
☐ SUNDAY Delivery
☐ HOLD Monday
☐ HOLD Tuesday
☐ HOLD Wednesday
☐ HOLD Thursday
☐ HOLD Friday
☐ HOLD Saturday
7 Payment
☒ Sender
☐ Recipient
☐ Third Party
☐ Credit Card
☐ Cash/Check
Total Packages 1
Total Weight 9.25
Total Charges 402

Source: Tennessee Board of Regents, Mr. Laabs' Files.

EXHIBIT 6

Payments to Jungle Marketing for the First Contract

INVOICES					PAYMENTS		
No.	Number	Date	Amount	Description	Date	Amount	
1	7027	02/17/01	\$28,000.00	Marketing Plan per Contract	02/22/01	\$28,000.00	
2	7036	03/02/01	\$1,337.98	Travel Expenses	03/27/01	\$1,353.91	A
3	7048	03/13/01	\$14,000.00	Balance of Genimation *			
4	7064	03/27/01	\$1,048.12	Travel Expenses	04/16/01	\$14,796.60	B
5	7076	04/24/01	\$1,315.47	Travel Expenses	05/22/01	\$1,364.00	C
			<u>\$45,701.57</u>		Subtotal	<u>\$45,514.51</u>	
6	Wingate Inn direct bill to Lead Center					\$533.70	D
					Grand total	<u>\$46,048.21</u>	
*Included in payment for invoice 7064							
Note: Hotel expenses for number 2 and number 5 were direct billed to TBR							
A Amount adjusted to reflect actual receipts for airport parking, rental car, hotel long distance telephone charges, and state rate for meals.							
B Robert Smith saw another client while in Nashville. The invoice was adjusted to reflect actual charges for TSBDC business (\$796.60).							
C Amount adjusted to reflect state rate for meals							
D Wingate Inn direct billed hotel charges:							
<u>Robert Smith</u>				<u>Mark Smith</u>			
	<u>Date</u>	<u>Amount</u>			<u>Date</u>	<u>Amount</u>	
1	02/20/01	\$67.95		1	02/20/01	\$67.95	
2	02/21/01	\$67.95		2	02/21/01	\$67.95	
3	02/22/01	\$67.95		3	02/22/01	\$67.95	
4	04/16/01	\$63.00				<u>\$203.85</u>	
5	04/17/01	\$63.00					
		<u>\$329.85</u>					

Source: Tennessee Board of Regents, Jungle Marketing Contract Files.

EXHIBIT 7

Notations from Dr. Rudley to Dr. Manning

Albert, let's discuss
J

Chancellor,

JUN 14 2001

Please see John's note. He said there is no need to meet on this. He will handle.

Glenda

TO: Dr. Rudley
FROM: Deanna *DR*
SUBJECT: Sole Source for TSBDC
DATE: June 1, 2001

OK - let all the right people know

Glenda is planning to arrange a time for the Chancellor to meet with you and Chris to discuss whether TSBDC can "sole source" the implementation phase of their marketing contract. There is currently one amendment that only extends the contract until July 1.

The situation is similar to the Tom Jackson - Fundraising implementation issue that we had to bid because the contract had ended and there was a change in the scope of services.

My opinion:

- THIS OPTION IS NOT AVAILABLE*
- Although Jungle Marketing is not a sole source vendor (other companies could provide the service), we could justify a "sole source" contract based on prior knowledge and considering the cost of "starting over" with another company - #6 or #8 on pg. 2 of Albert's memo.
 - Because the cost is expected to be \$180,000 (original contract for \$45,000 and they want to amend to \$225,000) and the scope of services is changing, I would not recommend amending the current contract. I think he should issue another RFP for the additional services. If he thinks they are best suited for the job, he can then choose Jungle Marketing based on all of the reasons he has given. It is especially important that we consistently apply our reasoning for whether or not to bid for additional services.

Dr. Manning, Deanna is correct. Another RFP is required and this is NOT Sole Source.
J

Source: Tennessee Board of Regents, Jungle Marketing Contract Files.

EXHIBIT 8

Dr. Rudley's note to Ms. Deanna Hall

The State University and Community College System
of Tennessee

From the Office of
THE VICE CHANCELLOR FOR BUSINESS AND FINANCE

Deanna, this RFP is
NOT APPROPRIATE
PLEASE SEE
Yellow
ASK ALBERT R
Call IT AND
START OVER

This is non competitive and
is for a special vendor
Jungle Marketing

Source: Tennessee Board of Regents, Jungle Marketing Contract Files.

EXHIBIT 9
Second and Third RFP, 2001

Steady Rain, Inc.
1050 N. Lindbergh Blvd
St. Louis, MO 63132

Jungle Marketing, Inc.
2500 N. Circle Drive
Suite 300
Colorado Springs, CO 80909

Atkinson Public Relations, Inc.
2100 West End Avenue North
Nashville, TN 37203

The Ingram Group
231 Third Avenue North
Nashville, TN 37201

Lovell Communications, Inc..
2021 Richard Jones Road, Ste 310
Nashville, TN 37215

MarketShare
7275 Glend Forest Dr.
Suite 203
Richmond, VA 23226

The Hay Group
5901 Peachtree Dunwoody
Building B, Ste 525
Atlanta, GA 30328

~~Dye Van Mol & Lawrence~~
~~209 7th Avenue North~~
~~Nashville, TN 37203~~ *(a)

Katcher Vaughn & Bailey
Communications, Inc.
105 Brentwood Place, Ste 2350
Brentwood, TN 37207

~~Matlock & Associates, Inc.~~
~~One Midtown Plaza, Ste 220~~
~~1360 Peachtree Street NE~~
~~Atlanta, GA 30309~~ *(a)

Conkling, Fiskum & McCormick
707 13th Street SE
Suite 116
Salem, OR 97301

Tom Jackson & Associates
Freedom Center, Ste 201
223 Eighth Avenue North
Nashville, TN 37203

McNeely Pigott & Fox
The Tower, Ste 2800
611 Commerce Street
Nashville, TN 37203

Duffey Communications, Inc.
3379 Peachtree Road, NE 7th Floor
Atlanta, GA 30326

The Strategy Group
1024 18th Avenue South
Nashville, TN 37203

Added for Third RFP, 2001

- (1) Mydesign
520 Glenpark Drive
Nashville, TN 37217-2408
- (2) Success Group, INC
4124 Central Pike
Hermitage, TN 37076

The second RFP was mailed to these companies.

*(a) The RFPs were returned to sender by the U.S. Post Office.

Source: Tennessee Board of Regents, Jungle Marketing Contract files.

EXHIBIT 10

Evaluation Scoring Sheets, Jungle Marketing and Atkinson PR

Gene Odum

Below are listed the four areas that will be used to judge the marketing proposals. Using the maximum score in the "Scoring Weight" column as a guide, please rate each of the proposals. A perfect score would total to 100.

	<u>Scoring Weight</u>	<u>Jungle Marketing</u>	<u>Atkinson PR</u>
Demonstrated Understanding of the Small Business Development System.	10	8	5
Technical Proposal and Demonstrated Understanding of TSBDC Marketing Campaign and Proposed Methodology for Providing Requested Services	60	50	20
Related Experience	10	7	4
Budget (Cost)	20	15	10
	<u>100</u>	<u>80</u>	<u>39</u>

*Overall Total**335**184*

Source: Tennessee Board of Regents, Jungle Marketing Contract files.

Evaluation Scoring Sheets, Jungle Marketing and Atkinson PR

09/05/2001 13:24

931 221 7748

APSU EXTENDED ED.

PAGE 62

Below are listed the four areas that will be used to judge the marketing proposals. Using the maximum score in the "Scoring Weight" column as a guide, please rate each of the proposals. A perfect score would total to 100.

	<u>Scoring Weight</u>	<u>Jungle Marketing</u>	<u>Atkinson PR</u>
Demonstrated Understanding of the Small Business Development System.	10	9	7
Technical Proposal and Demonstrated Understanding of TSBDC Marketing Campaign and Proposed Methodology for Providing Requested Services	60	50	30
Related Experience	10	7	5
Budget (Cost)	20	18	15
	<u>100</u>	<u>84</u>	<u>57</u>

Notes:

Difficult to evaluate budget of Atkinson Proposal because costs were not included for the collateral materials.

Carol Clark

Carol Clark, Interim Director
TSBDC - APSU

Source: Tennessee Board of Regents, Jungle Marketing Contract files.

(EXHIBIT 10 CONTINUED)

Evaluation Scoring Sheets, Jungle Marketing and Atkinson PR

Jamie Frakes

Below are listed the four areas that will be used to judge the marketing proposals. Using the maximum score in the "Scoring Weight" column as a guide, please rate each of the proposals. A perfect score would total to 100.

	<u>Scoring Weight</u>	<u>Jungle Marketing</u>	<u>Atkinson PR</u>
Demonstrated Understanding of the Small Business Development System.	10	9	2
Technical Proposal and Demonstrated Understanding of TSBDC Marketing Campaign and Proposed Methodology for Providing Requested Services	60	55	25
Related Experience	10	10	9
Budget (Cost)	20	15	5
	<u>100</u>	<u>89</u>	<u>41</u>

Source: Tennessee Board of Regents, Jungle Marketing Contract files.

(EXHIBIT 10 CONTINUED)

Evaluation Scoring Sheets, Jungle Marketing and Atkinson PR

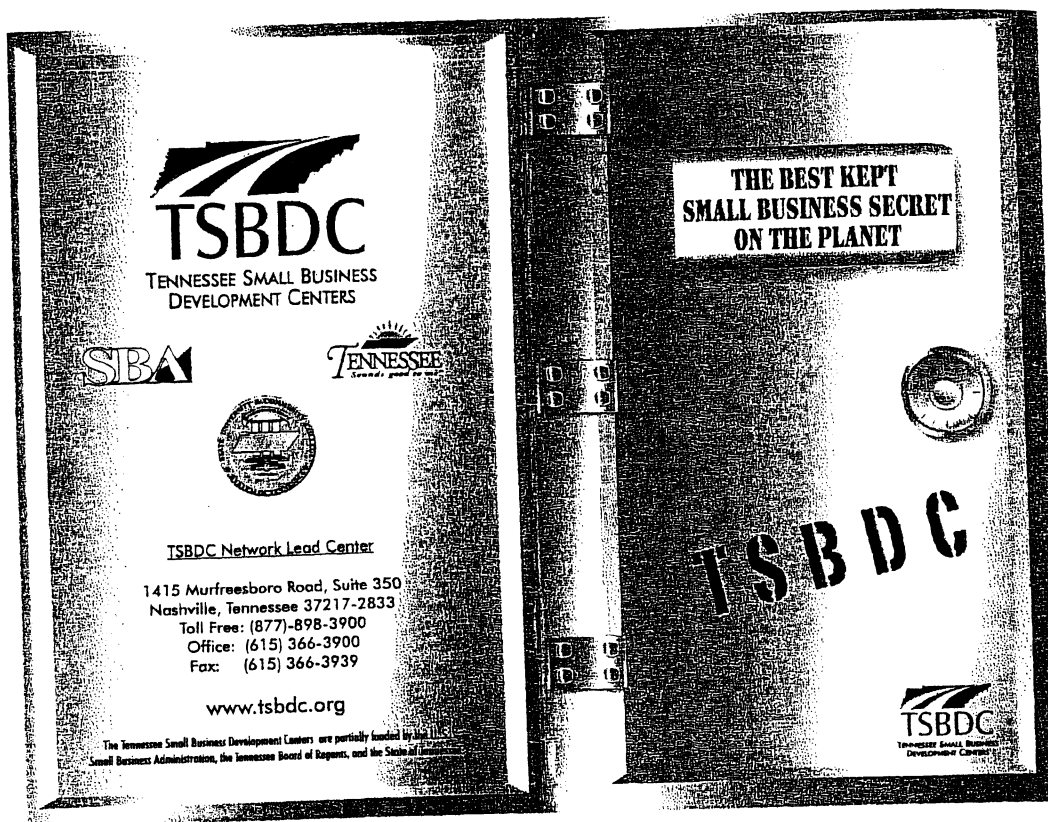
Pat Geho



Below are listed the four areas that will be used to judge the marketing proposals. Using the maximum score in the "Scoring Weight" column as a guide, please rate each of the proposals. A perfect score would total to 100.

	<u>Scoring Weight</u>	<u>Jungle Marketing</u>	<u>Atkinson PR</u>
Demonstrated Understanding of the Small Business Development System.	10	7	3
Technical Proposal and Demonstrated Understanding of TSEDC Marketing Campaign and Proposed Methodology for Providing Requested Services	60	50	30
Related Experience	10	10	8
Budget (Cost)	20	15	6
	<u>100</u>	<u>82</u>	<u>47</u>

Source: Tennessee Board of Regents, Jungle Marketing Contract files.

TSBDC Brochure




If you are a small business owner, entrepreneur or you are thinking about starting a new business, the Tennessee Small Business Development Center (TSBDC) is here to help you every step of the way!

You can feel confident that all of your needs will be met as you face the new business challenges of the future...today!

The TSBDC is a network of professional business consultants with centers in 14 cities throughout the State of Tennessee. The TSBDC prides itself on providing expert business advice to all types of businesses whether you are a manufacturer, retailer, service provider, or a professional; we are here to help you help yourself.



Personalized one-on-one counseling:

Each of our 14 centers has professional business consultants that will meet with you to determine specifically what services you will need.

Training:


You and your staff can attend training on many relevant business subjects such as:

- Buying and selling abroad
- E-Commerce
- Marketing
- Preparing financial statements for small business
- Starting & managing a small business
- Writing a business plan

Go to our web site at www.tsbdc.org for the current schedule of courses.

Referrals to professional services and agencies:

The TSBDC has extensive resources from which to choose to help you find the answers to your business questions.



Your Success is Our Business

We have helped over 79,000 businesses just like you in the following areas of expertise...



• Accounting	• Employee Relations	• Management
• Advertising	• Expansion	• Marketing
• Banking	• Finance	• Operations
• Customer Service	• International Trade	• Public Relations
		• Sales Training and more...

Allow us to help you unleash the power in your business by discovering the many different consulting solutions available for your business at the TSBDC.

2

Source: TSBDC Lead Center.


TSBDC Brochure

Start-ups

We understand you have a dream... owning your own business. We want to help you make that dream become a reality. We provide special training and services tailored towards all of the specific issues you will need to resolve successfully to start a business. We will assist you in everything from filling out forms for your new trade name all the way through writing a successful business plan.

- Banking needs
- Business plan
- Feasibility advice
- I.R.S. requirements
- Marketing ideas
- Operations
- Ownership structure
- Record keeping
- Set up accounting systems
- Trade name filing





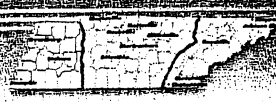
Of course there are too many areas to mention them all in this brochure, but if you want to start your new business right the first time, then call the TSBDC now to get started. We also provide training that will assist you with the basic business skills that you need to improve your chances of success.

Existing Business


We offer specific services geared towards helping the more seasoned and experienced small business owner. Whether you are a sole proprietor, S-corp, corporation, partnership or LLC, we have the professionals and the services that can help solve the various problems that are found in growing and expanding your business.

- Assistance with financing
- Customer service
- Employee issues
- Expansion plans
- Growth issues
- Health insurance
- Management staff
- Marketing
- Receivable and cash flow issues
- Sources of new capital



Market your products or services worldwide



95% of the world's markets are outside our U.S. borders and Tennessee companies should consider entering or expanding into new international markets. You may be surprised to discover that many foreign customers need exactly what you produce.

This is why our International Trade Center provides in-depth consulting and training to help you develop and implement an international project.

West Tennessee

Dyersburg State Community College
1510 Lake Road
Dyersburg, Tennessee 38024
Office: (731) 286-3201
Fax: (731) 286-3271

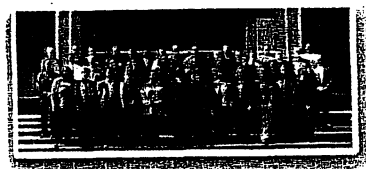
Jackson State Community College
210 E. Chester Street
Jackson, Tennessee 38301
Office: (731) 424-5389
Fax: (731) 427-3942


University of Memphis
976 W. Park Loop, Room 101
Memphis, Tennessee 38152-4110
Office: (901) 478-2500
Fax: (901) 478-4072

Memphis Renaissance Center / Satellite Office of U of M
Business Information Center
555 Beale Street
Memphis, Tennessee 38103
Office: (901) 526-9300
Fax: (901) 525-2357

Tennessee Small Business Development Centers



Our professional staff provides services statewide...


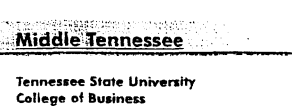




Source: TSBDC Lead Center.

TSBDC Brochure

Middle Tennessee

Austin Peay State University
420 S. Madison Street, Suite 2
Clarksville, Tennessee 37044
Office: (931) 447-2331, Ext. 261
Fax: (931) 583-0984

Middle Tennessee State University
Butherford County Chamber of Commerce Bldg.
501 Alexander Boulevard
Murfreesboro, Tennessee 37129
Office: (615) 898-2745
Fax: (615) 893-7089

Maury County Alliance / Satellite Office of MTSU
106 West Sixth Street
Columbia, Tennessee 38401
Office: (931) 388-5674
Fax: (931) 867-3344

Lebanon/Wilson County Chamber of Commerce / Satellite Office of MTSU
149 Public Square
Lebanon, Tennessee 37087
Office: (615) 444-5503
Fax: (615) 443-0596



Middle Tennessee

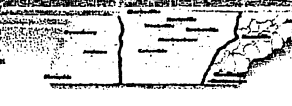

Tennessee State University
College of Business
330 10th Avenue, North
Nashville, Tennessee 37203-3401
Office: (615) 963-7179
Fax: (615) 963-7160

Business Information Center
Tennessee State University
Aron Williams Campus
330 10th Avenue, North, Room 314
Nashville, Tennessee 37203-3401
Office: (615) 963-7253
Fax: (615) 963-7160

Tennessee Technological University
College of Business Administration
1105 N. Peachtree Street
P.O. Box 5023
Cookeville, Tennessee 38505-0001
Office: (931) 372-3636
Fax: (931) 372-6534

Four Lakes Regional Development Authority / Satellite Office of TTU
P.O. Box 63
Hartsville, Tennessee 37074-0063
Office: (615) 374-4607
Fax: (615) 374-4608

East Tennessee

East Tennessee State University College of Business
2109 West Main Street
Johnson City, Tennessee 37604-0698
Office: (423) 439-8505
Fax: (423) 439-8506

ETSU College of Business / Satellite Office of ETSU
1501 University Boulevard
Kingsport, Tennessee 37640
Office: (423) 392-8017
Fax: (423) 392-8014

Chattanooga State Technical Community College
100 Cherokee Boulevard, Suite 202
Chattanooga, Tennessee 37405-0880
Office: (423) 756-8668
Fax: (423) 756-6195

Cleveland State Community College
3525 Adairson Drive
Cleveland, Tennessee 37320-3570
Office: (423) 478-6247
Fax: (423) 478-6251

Pellissippi State Technical Community College
Knoxville Area Chamber Partnership
601 W. Summit Hill Drive, Suite 300
Knoxville, Tennessee 37902-2011
Office: (865) 637-2980
Fax: (865) 971-4439

Technology 2020 Office / Affiliate Office of PSTCC
1070 Commerce Park Drive
Oak Ridge, Tennessee 37830-8026
Office: (865) 483-2468
Fax: (865) 220-2030

Blount County Chamber / Satellite Office of PSTCC
701 S. Washington Street
Merriville, Tennessee 37804
Office: (865) 983-2241

TSBDC - International Trade Centers

ITC for West Tennessee
976 W. Park Loop, Room 104
Memphis, Tennessee 38152-4110
Office: (901) 678-4174
Fax: (901) 678-4833

ITC for Middle Tennessee
Commerce Center Building
211 Commerce Street, 3rd Floor
Nashville, Tennessee 37201
Office: (615) 743-3058
Fax: (615) 743-3042

ITC for East Tennessee
601 W. Summit Hill Drive, Suite 300
Knoxville, Tennessee 37902-2011
Office: (865) 637-2990
Fax: (865) 521-6367

**The Best Kept
Small Business Secret on the Planet**

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There is no charge for any of our services, with the exception of an occasional small fee to attend some of our seminars. It doesn't get any better than this.

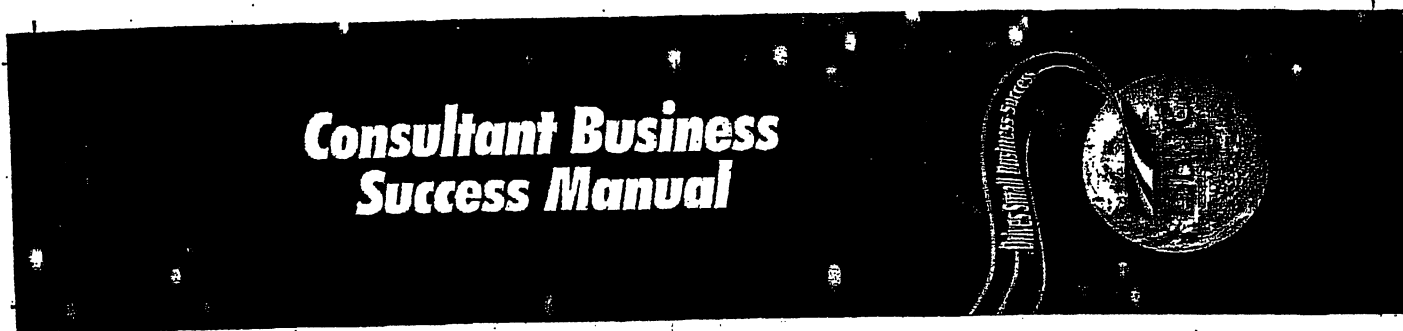
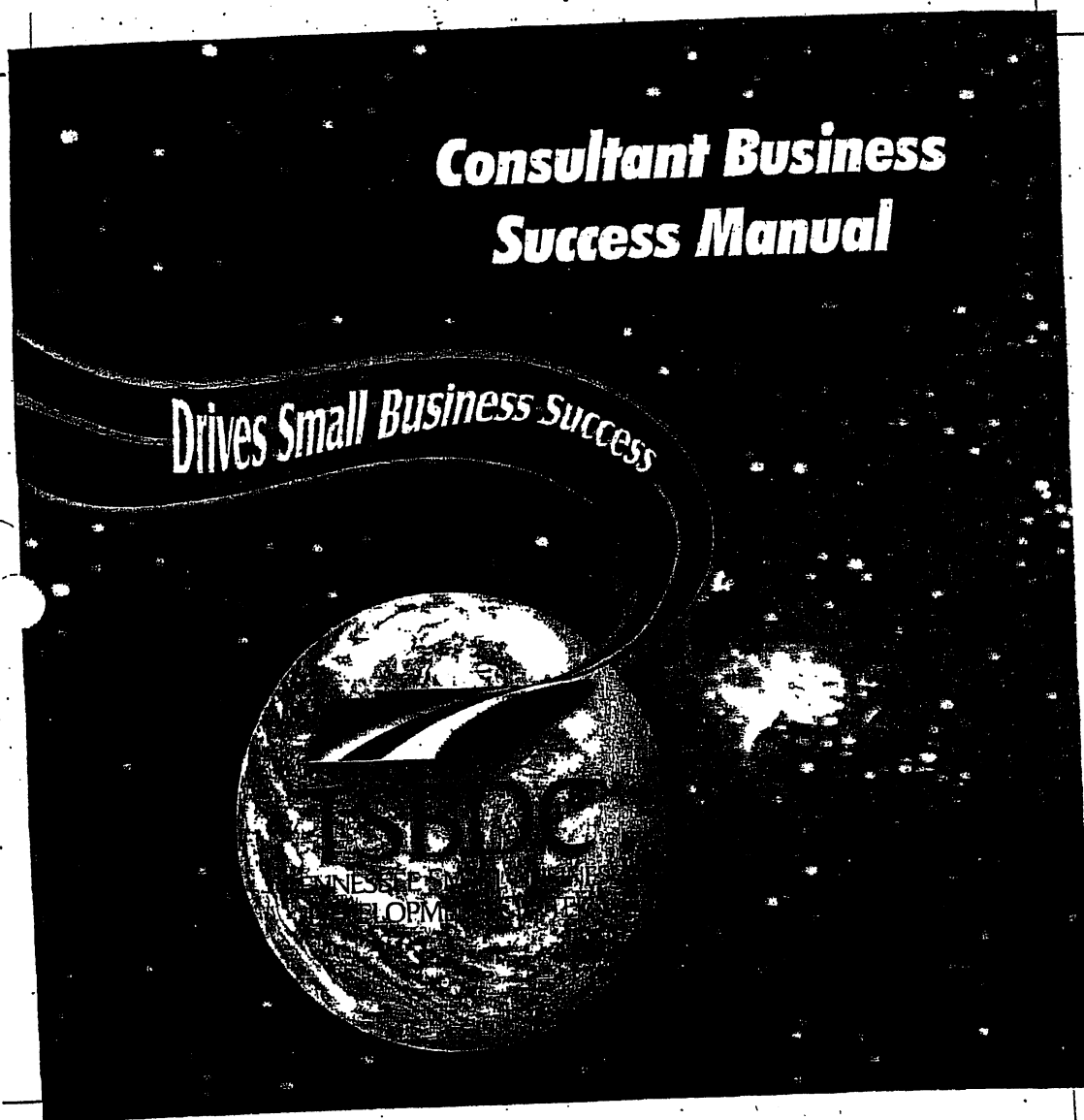
So what are you waiting for? Find the center closest to you in this brochure and call today to let the TSBDC go to work for you now.

Source: TSBDC Lead Center.

TSBDC Peel Off Window/Door Sticker



Source: TSBDC Lead Center.



Source: TSBDC Lead Center.

EXHIBIT 14
Payments to Jungle Marketing for the second contract

INVOICES					PAYMENTS	
#	Number	Date	Amount	Description	Date	Amount
1	7237	11/30/01	\$18,000.00	Management fee	12/17/01	\$18,000.00
2	7259	01/07/02	\$5,943.00	Management fee (\$5,000)	01/30/02	\$5,943.00 A
				Binder Design on CD (\$928)		
				Shipping CD Federal Express (\$15)		
3	7268	01/15/02	\$8,327.00	Window Stickers	01/30/02	\$8,327.00 A
4	7269	01/15/02	\$18,000.00	Customer Service Training	02/07/02	\$18,000.00
5	7289	02/12/02	\$5,000.00	Consulting Services	03/07/02	\$5,000.00
6	7298	02/22/02	\$580.06	Travel Expenses	03/14/02	\$602.17 B
7	7439	09/09/02	\$16,450.00	Brochures	10/15/02	\$16,450.00
8	7497	11/10/02	\$8,000.00	Web Site Design and Impl.	01/16/03	\$8,000.00
			\$80,300.06		Subtotal	\$80,322.17
9	Wingate Inn direct bill to Lead Center					\$158.56 C
					Grand total	\$80,480.73
A Paid by one check (\$14,270.00).						
B Payment amount adjusted to reflect state rate for meals.						
C Wingate Inn direct billed hotel charges:						
<u>Robert Smith</u>						
	<u>Date</u>	<u>Amount</u>				
1	2/12/2002	\$79.28				
2	2/13/2002	\$79.28				
		\$158.56				

Source: Tennessee Board of Regents, Jungle Marketing Contract Files.

Albert Laabs

From: Bob Smith [bob@junglemarketing.com]
Sent: Thursday, November 07, 2002 6:55 PM
To: 'Albert Laabs'; alaabs@mail.tsbdc.org
Cc: jean@junglemarketing.com
Subject: TSBDC WEB site update #2 from Jungle

Importance: High
Sensitivity: Confidential

Hi Albert,

Well, its the end of the day and I have to complete some things before I go home as my daughter has a Karate tournament and I would like to go see her do this.

These are the things you had told me you would provide when you got the time.

1. Sample Business Plans- We did pull off some of the business plans off of MI but we would like some from TSBDC. We think they may be more pertinent to your client base. Could you have someone send these to us. Should we ask Jamie for them. I am following your lead from the conversation you and I had and wanted to be sure this would happen. If not, that is OK, there is a place for them.
2. What other items do you want on the registration form for the course sign up. We spoke in generalities, but you had mentioned you would provide some specifics?
3. Any additional copy you would like to add to "What is the TSBDC" You told me you had some of your own ideas and would put them down on paper when you got the time. I know your "extra" time is virtually non-existent, but if you can get to it let me know.
4. We need to discuss the language translation issues. We did talk with Florida and MI and discussed how they got theirs done. They hired an outside person to do it because web based electronic translators do not work very well. Too many cultural nuances that would be missed and would insult the reader rather than help them. Another issue was they only translated a few of their main pages. Their entire sites are not translated. Anyway we need to discuss a possible solution for you if you still want to do this. Secondly one question that was brought up was that if we do have a different language in the site, the person reading it may have an expectation that if they call, someone at the center they call will be able to speak their language. Interesting view no less. Let me know.
5. We need to talk with you and Nancy about the actual technical abilities of your WEB server to see what we can still provide and what your limitations are. When you get the time, would you or have Vicki or Nancy call Jean and have a conference call set up so we can resolve these things. I believe this would be very important to you.
6. I would like to send an invoice for payment for the WEB site. This is a pure business questions as I am sure you are aware we have gone way over the \$ 8,000.00 that I budgeted, but I did not ask for any more. That is not your issue, it is mine. I promised a WEB site for \$ 8,000.00. This site is ready to go live. Would you advise me of the status of this. We can update as we go!
7. I would like to provide you and the entire TSBDC system with a gift. Would you please advise me as to rules and how it can work. This is also very important to me as I would like to thank everyone involved that did such a great job. You have great people and a good system Albert. You should be very proud of what you have built. I hope you feel this site compliments the TSBDC system. We believe it does, but we are not the client, you are!
8. I have a 2 bedroom condo now available at The Charter Resort at Beaver Creek that is available FREE the 3rd week of January. Would you like to go skiing. If you would let me know and I will call up my friend Steve and see if he still has it. He told me about this yesterday and I was going to bring it up after our conference call today as a surprise but we never talked. Let me know. Beaver Creek is an awesome ski areas. These condos usually rent for \$ 600 a night. Anyway, I cannot use it then as I will be in New York and thought you may like it since you enjoy skiing. I can get you local lift tickets for about \$ 50.00 a day. They are \$ 66.00 regular price.

Source: Tennessee Board of Regents files.

EXHIBIT 15 (CONTINUED)
Condo E-mail

Take care and talk to you soon.

My best to you.

Know anyone that has any surfboards for sale? Just kidding!

Bob Smith
Jungle Marketing Inc.
5245 Centennial Blvd. # 207
Colorado Springs, CO 80919
719-633-2913
Bob@junglemarketing.com